

No. 16199

Vol. 3098

United States
Court of Appeals
For the Ninth Circuit

See Also
3097

JAMES BURTON ING and RAYMOND
WRIGHT,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 276)

Appeals from the District Court
for the District of Alaska,
Third Division

FILED

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PAUL R. GIBBEN, CLERK

No. 16199

United States
Court of Appeals
For the Ninth Circuit

JAMES BURTON ING and RAYMOND
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the District of Alaska,
Third Division

Criminal No. 3772

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES BURTON ING, RAYMOND WRIGHT,
CHARLES E. SMITH, JOHN WALKER,
DEWEY TAYLOR and LEMUEL ASHLY
WILLIAMS,

Defendants.

INDICTMENT

(Violation of Section 65-6-1, ACLA, 1949)

The Grand Jury charges:

Count I.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware did wilfully, unlawfully and feloniously with intent to injure and defraud C. A. Peters, owner of the Fifth Avenue Cash Grocery, utter and publish as true and genuine a forged check of the following-described tenor and purport:

James B. Ing & Raymond Wright

Morrison-Knudsen Company, Inc.

General Contractors

Boise, Idaho

Pay Check No. 9078.

This check not good for more than sixty days.

Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Wendell R. Ware.

Badge No. 1177.

Gross Earnings 236.00.

Deductions

WT & FICA 26.20 A.U.C. 1.18 Alaska I.T. 3.15

B. and L. 28.00

Amount of Check 177.47.

The sum of \$177 and 47 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware well knowing at the time that the check was false and forged.

Count II.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware did wilfully, unlawfully, and feloniously with intent to injure and defraud the Kennedy Hardware, Incorporated, a corporation duly organized and incorporated in the Territory of Alaska, the owners of a certain business enterprise, the Sport Shop, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 8941.

This check not good for more than sixty days.

Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Wendell R. Ware.

Badge No. 1177.

Gross Earnings 236.00.

Deductions

WT & FICA 26.20 A.U.C. 1.18 Alaska I.T. 3.15
B. and L. 28.00

Amount of Check 177.47.

The sum of \$177 and 47 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware well knowing at the time that the check was false and forged.

Count III.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware did wilfully, unlawfully and feloniously with intent to injure and defraud the Hub Clothing Company, Incorporated, a corporation duly organized and incorporated in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

The said James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware well knowing at the time that the check was false and forged.

Count IV.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware did wilfully, unlawfully and feloniously with intent to injure and defraud the Union Club of Anchorage, Incorporated, a corporation duly organized and incorporated in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 8895.

This check not good for more than sixty days.
Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Wendell R. Ware.

Badge No. 1177.

Gross Earnings 236.00.

Deductions

WT & FICA 26.20	A.U.C. 1.18	Alaska I.T. 3.15
B. and L. 28.00		

Amount of Check 177.47.

The sum of \$177 and 47 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware well knowing at the time that the check was false and forged.

Count V.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware did wilfully, unlawfully and feloniously with intent to injure and defraud Wallace Burnett and Helen Burnett, owners of The Club, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

10 *James B. Ing & Raymond Wright*

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 8965.

This check not good for more than sixty days.
Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of Wendell R. Ware.

Badge No. 1177.

Gross Earnings 280.00.

Deductions

WT & FICA 39.79	A.U.C. 1.40	Alaska I.T. 3.55
B. and L. 28.00		

Amount of Check 207.26.

The Sum of \$207 and 26 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6 Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Charles E. Smith aka Wendell R. Ware well knowing at the time that the check was false and forged.

Count VI.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud Dukal Enterprises, Incorporated, a corporation duly organized and incorporated in the Territory of Alaska, the owners of a certain business enterprise, the Hanover Gift Shop, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9089.

This check not good for more than sixty days.
Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Thomas A. Brown.

Badge No. 7134.

Gross Earnings 280.00.

Deductions

WT & FICA 30.70 A.U.C. 1.40 Alaska I.T. 3.55
B. and L. 28.00

Amount of Check 216.35.

The Sum of \$216 and 35 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown well knowing at the time that the check was false and forged.

Count VII.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud John D. Harris, owner of the Anchorage Liquor Store, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.

General Contractors

Boise, Idaho

Pay Check No. 9055.

This check not good for more than sixty days.

Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of Thomas A. Brown.

Badge No. 7134.

Gross Earnings 280.00.

Deductions

WT & FICA 30.70 A.U.C. 1.40 Alaska I.T. 3.55

B. and L. 28.00

Amount of Check 216.35.

The Sum of \$216 and 35 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6 Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown well knowing at the time that the check was false and forged.

Count VIII.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud Wilma Jones and Cecil Jones, the owners of Hank's Hardware, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 9008.

This check not good for more than sixty days.

Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Thomas A. Brown.

Badge No. 7134.

Gross Earnings 280.00.

Deductions

WT & FICA 30.70 A.U.C. 1.40 Alaska I.T. 3.55

B. and L. 28.00

Amount of Check 216.35.

The Sum of \$216 and 35 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6 Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown well knowing at the time that the check was false and forged.

Count IX.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud C. T. Rewak, owner of Tom's Radio Service, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 9073.

This check not good for more than sixty days.
 Contract 1787—August 22, 1956.

Period Ended 8/19/56.

Pay to the Order of Thomas A. Brown.

Badge No. 7134.

Gross Earnings 280.00.

Deductions

WT & FICA	30.70	A.U.C.	1.40	Alaska I.T.	3.55
		B. and L.	28.00		

Amount of Check 216.35.

The Sum of \$216 and 35 cts.

THE FIRST NATIONAL BANK
 OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
 COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown well knowing at the time that the check was false and forged.

Count X.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud Robert W. Stratton, Jr., owner of Stratton's Gateway Service, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9015.

This check not good for more than sixty days.

Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of Thomas A. Brown.

Badge No. 7134.

Gross Earnings 280.00.

Deductions

WT & FICA 30.70 A.U.C. 1.40 Alaska I.T. 3.55

B. and L. 28.00

Amount of Check 216.35.

The Sum of \$216 and 35 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown well knowing at the time that the check was false and forged.

Count XI.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and John Walker aka Thomas A. Brown did wilfully, unlawfully and feloniously with intent to injure and defraud Roy McKay, owner of McKay's Hardware, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9057.

of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud Thomas B. Waters, owner of the Frontier Loan Company, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 8903.

This check not good for more than sixty days.
 Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60	A.U.C. 1.40	Alaska I.T. 3.54
B. and L. 28.00		

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
 OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
 COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XIII.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud Sonja Davis and Walter Davis, owners of the Davis Liquor Store, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9012.

This check not good for more than sixty days.
Contract 1787—August 21, 1956.

Period Ended 8/19/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60 A.U.C. 1.40 Alaska I.T. 3.54
 B. and L. 28.00

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
 OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
 COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XIV.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud Robert J. Shimek and Violet D. Shimek, owners of the Record Shop, The Radio-TV Center, a partnership duly organized in the Territory of Alaska, utter and publish as true and genu-

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XV.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud George J. Cox and James LaBounty, owners of the City Service, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 8977.

This check not good for more than sixty days.

Contract 1787—August 15, 1956.

Period Ended 8/12/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60	A.U.C. 1.40	Alaska I.T. 3.54
B. and L. 28.00		

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XVI.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud Benny Leonard and Mary Leonard, owners of Leonard's Varieties, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 9065.

This check not good for more than sixty days.
 Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60	A.U.C. 1.40	Alaska I.T. 3.54
B. and L. 28.00		

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
 OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
 COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XVII.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud H. I. Stewart and Oro Stewart, owners of the Stewart's Photo Shop, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9051.

This check not good for more than sixty days.

Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60 A.U.C. 1.40 Alaska I.T. 3.54
B. and L. 28.00

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XVIII.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods did wilfully, unlawfully and feloniously with intent to injure and defraud John D. Harris, owner of the Anchorage Liquor Store, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
General Contractors
Boise, Idaho

Pay Check No. 9056.

This check not good for more than sixty days.
Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of James C. Woods.

Badge No. 6840.

Gross Earnings 280.00.

Deductions

WT & FICA 27.60	A.U.C. 1.40	Alaska I.T. 3.54
B. and L. 28.00		

Amount of Check 219.46.

The Sum of \$219 and 46 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6 Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Dewey Taylor aka James C. Woods well knowing at the time that the check was false and forged.

Count XIX.

On or about the 1st day of September, 1956, at or near Anchorage, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Lemuel Ashly Williams aka Theodore Williams did wilfully, unlawfully and feloniously with intent to injure and defraud John D. Harris, owner of the Anchorage Liquor Store, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 8927.

This check not good for more than sixty days.
 Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of Theodore Williams.

Badge No. 6969.

Gross Earnings 270.00.

Deductions

WT & FICA 19.50	A.U.C. 1.35	Alaska I.T. 3.38
B. and L. 28.00		

Amount of Check 217.87.

The Sum of \$217 and 87 cts.

THE FIRST NATIONAL BANK
OF ANCHORAGE

59-6 Anchorage, Alaska.

MORRISON-KNUDSEN
COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Lemuel Ashly Williams aka Theodore Williams well knowing at the time that the check was false and forged.

Count XX.

On or about the 1st day of September, 1956, at or near Mile 113, Glenn Highway, Third Judicial Division, District of Alaska, James Burton Ing, Raymond Wright and Lemuel Ashly Williams aka Theodore Williams did wilfully, unlawfully and feloniously with intent to injure and defraud Gertrude Jurgeleit and Oscar Jurgeleit, owners of the Sheep Mountain Lodge, a partnership duly organized in the Territory of Alaska, utter and publish as true and genuine a forged check of the following-described tenor and purport:

Morrison-Knudsen Company, Inc.
 General Contractors
 Boise, Idaho

Pay Check No. 8924.

This check not good for more than sixty days.
 Contract 1787—August 29, 1956.

Period Ended 8/26/56.

Pay to the Order of Theodore Williams.

Badge No. 6969.

Gross Earnings 270.00.

Deductions

WT & FICA 19.50	A.U.C. 1.35	Alaska I.T. 3.38
B. and L. 28.00		

Amount of Check 217.87.

The Sum of \$217 and 87 cts.

THE FIRST NATIONAL BANK
 OF ANCHORAGE

59-6

Anchorage, Alaska.

MORRISON-KNUDSEN
 COMPANY, INC.

By /s/ GUY M. KING.

[Reverse side of check with endorsement and bank stamps are not reproduced because they are partially illegible.]

The said James Burton Ing, Raymond Wright and Lemuel Ashly Williams aka Theodore Williams well knowing at the time that the check was false and forged.

A True Bill.

/s/ HAROLD STRANDBERG,
Foreman.

/s/ WILLIAM T. PLUMMER,
United States Attorney.

Witnesses examined before the Grand Jury: T. E. Pass, Dewey Taylor, Charles E. Smith, John Walker, Lemuel Williams, Raymond Wright, Virginia Shields, Carl R. Berlin, Henry Futor, Ivan S. Barton, Helen M. Burnett, Charles H. Knuth, John D. Harris, Mabel Rewak, George C. Wilmoth, Roy McKay, Thomas B. Waters, Darleen Rasmussen, Benny L. Leonard, William J. Gordon, Jim LaBounty, Joseph Turgeon, Gertrude Jurgeleit, Roy B. Johnson, Jr., Russell Hobbs, Gladys Faye Berry.

Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury and Filed in the District Court, Territory of Alaska, Third Division.

WM. A. HILTON,
Clerk.

By /s/ AGNES CURTIS,
Deputy.

Bail fixed in the amount of: Ing, \$25,000; Williams, \$10,000; Taylor, \$750; Walker, \$750; Wright, \$12,500; Smith, \$2,500.

/s/ J. L. McCARREY, JR.,
District Judge.

October 29, 1957.

[Title of District Court and Cause.]

VERDICT No. 1

We, the jury, duly impaneled and sworn to try the above-entitled case, do find the defendant, James Burton Ing, guilty of the crime charged in Count I of the indictment;

And we do further find the defendant guilty of the crime charged in Count II of the indictment;

And we do further find the defendant guilty of the crime charged in Count III of the indictment;

And we do further find the defendant guilty of the crime charged in Count IV of the indictment;

And we do further find the defendant guilty of the crime charged in Count V of the indictment;

And we do further find the defendant guilty of the crime charged in Count VI of the indictment;

And we do further find the defendant guilty of the crime charged in Count VII of the indictment;

And we do further find the defendant guilty of the crime charged in Count VIII of the indictment;

And we do further find the defendant guilty of the crime charged in Count IX of the indictment;

And we do further find the defendant guilty of the crime charged in Count X of the indictment;

And we do further find the defendant guilty of the crime charged in Count XI of the indictment;

And we do further find the defendant guilty of the crime charged in Count XII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XIII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XIV of the indictment;

And we do further find the defendant guilty of the crime charged in Count XV of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVI of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVIII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XIX of the indictment;

And we do further find the defendant guilty of the crime charged in Count XX of the indictment.

Dated at Anchorage, Alaska, this 28th day of Feb., 1958.

/s/ HADLEY H. SULLIVAN,
Foreman.

[Endorsed]: Filed and entered February 28, 1958.

[Title of District Court and Cause.]

VERDICT No. 2

We, the jury, duly impaneled and sworn to try the above-entitled case, do find the defendant Raymond Wright, not guilty of the crime charged in Count I of the indictment;

And we do further find the defendant not guilty of the crime charged in Count II of the indictment;

And we do further find the defendant not guilty of the crime charged in Count III of the indictment;

And we do further find the defendant not guilty of the crime charged in Count IV of the indictment;

And we do further find the defendant not guilty of the crime charge in Count V of the indictment;

And we do further find the defendant guilty of the crime charged in Count VI of the indictment;

And we do further find the defendant guilty of the crime charged in Count VII of the indictment;

And we do further find the defendant guilty of the crime charged in Count VIII of the indictment;

And we do further find the defendant guilty of the crime charged in Count IX of the indictment;

And we do further find the defendant guilty of the crime charged in Count X of the indictment;

And we do further find the defendant guilty of the crime charged in Count XI of the indictment;

And we do further find the defendant guilty of the crime charged in Count XII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XIII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XIV of the indictment;

And we do further find the defendant guilty of the crime charged in Count XV of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVI of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVII of the indictment;

And we do further find the defendant guilty of the crime charged in Count XVIII of the indictment;

And we do further find the defendant not guilty of the crime charged in Count XIX of the indictment;

And we do further find the defendant not guilty of the crime charged in Count XX of the indictment.

Dated at Anchorage, Alaska, this 28th day of February, 1958.

/s/ HADLEY H. SULLIVAN,
Foreman.

[Endorsed]: Filed and entered February 28, 1958.

United States District Court for the District of
Alaska, Third Division

No. Cr. 3772

UNITED STATES OF AMERICA,

vs.

JAMES BURTON ING.

JUDGMENT AND COMMITMENT

On this 5th day of March, 1958, came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a finding of guilty of the offense of uttering and publishing a forged check in violation of Section 65-6-1 ACLA

1949, as charged in Counts I thru XX of the indictment on file herein; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Fifteen (15) years on each of Counts I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, said sentence imposed on Counts II thru XX to run concurrently with said sentence imposed on Count I, said sentence to commence and begin on the 5th day of March, 1958.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Done in open Court this 5th day of March, 1958,
at Anchorage, Alaska.

/s/ J. L. McCARREY, JR.,
United States District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered March 5, 1958.

United States District Court for the District
of Alaska, Third Division

No. Cr. 3772

UNITED STATES OF AMERICA,

vs.

RAYMOND WRIGHT.

JUDGMENT AND COMMITMENT

On this 5th day of March, 1958, came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of uttering and publishing a forged check in violation of Section 65-6-1 ACLA 1949, as charged in Counts VI thru XVIII of the Indictment on file herein; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It It Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twelve (12) years on each of Counts VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, said sentence imposed on

Counts VII thru XVIII to run concurrently with said sentence imposed on Count VI, said sentence to commence and begin on the 5th day of March, 1958.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Done in open Court this 5th day of March, 1958, at Anchorage, Alaska.

/s/ J. L. McCARREY, JR.,
United States District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered March 5, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: James Burton Ing, Box 1178, Anchorage, Alaska.

Names and Addresses of Appellant's Attorneys:
Wendell P. Kay, Esq., 604 Fourth Avenue,
Anchorage, Alaska; T. N. Gore, Jr., Fairbanks,
Alaska.

Offense: Forgery.

Concise Statement of Judgment or Order, giving date, and any sentence:

Judgment entered as of March 5, 1958, finding the appellant guilty of the offense of uttering and publishing a forged check in violation of Section 65-6-1, ACLA 1949, as charged in Counts I through XX of the indictment, and sentencing him to serve fifteen years on each of said twenty counts, said sentences to run concurrently, in such penal institution as the Attorney General or his authorized representative may direct. Appellant is presently on bail pending decision on motion for judgment of acquittal.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above judgment.

Dated at Anchorage, Alaska, March 14, 1958.

/s/ S. J. BUCKALEW, JR., for

/s/ WENDELL P. KAY,

Of Attorneys for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 14, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Raymond Wright,
Fairbanks, Alaska.

Name and address of Appellant's Attorney: Everett
Hepp, Esq., Box 1022, Fairbanks, Alaska.

Offense: Forgery.

Concise Statement of Judgment or Order, giving date and any sentence:

Judgment entered as of March 5, 1958, finding the Appellant guilty of the offense of uttering and publishing a forged check, in violation of Section 65-6-1, ACLA 1949, as charged in Counts VI through XVIII of the indictment, and sentencing him to serve twelve (12) years on each of said counts, said sentences to run concurrently, in such penal institution as the Attorney General or his authorized representative may direct.

Appellant is presently on bail granting pending a decision on a motion for judgment of acquittal.

The above-named appellant hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above judgment.

Dated at Anchorage, Alaska, July 9, 1958.

EVERETT HEPP,
Attorney for Defendant
Wright.

By /s/ WENDELL P. KAY.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 9, 1958.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

The defendant, James Burton Ing, moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

2. The verdict is not supported by substantial evidence.

3. The Court erred in charging the jury, and in refusing to charge the jury, as requested by the defendant; particularly, the Court erred in refusing to instruct the jury that the witnesses Brownfield and Walker were accomplices.

4. The Court erred in submitting the question of corroboration of an accomplice to the jury, there being no corroborating evidence.

5. Newly discovered evidence, unknown to the defendant at the time of trial, consisting of admissions by the witness Brownfield that his evidence was coerced and false; that such evidence is material and would undoubtedly have produced an acquittal had it been known at the time of the trial; that failure to learn of such evidence was not due to lack of diligence on the part of the defendant; that such evidence is so conclusive as to destroy the credibility of the witness Brownfield; that copies of letters constituting this newly discovered evi-

dence are attached to this motion and made a part hereof by reference.

/s/ WENDELL P. KAY,

Attorney for Defendant Ing.

From C. K. Brownfield, 15265.

April 2, 1958.

To Mr. Joseph J. Janas, 6007 S. Komensky, Chicago, Ill.

Dear Joe:

I have not written before because as a transfer here I had to have my correspondence list okayed again. They have some rules here that are different than McNeil Island. I suppose you are working hard and will be glad that spring is about here as it will make driving the truck easier. Now about my case: As you know Alaska placed a detainer against me in April of 1957. During all the time since then I have tried to get it dropped and had no luck until last February. Actually I always felt it was a move on their part to force me to testify in the check case. During the talks I had with different people they all told me what would happen if I didn't cooperate the way they wanted me to. In this respect they accomplished their purpose, as I felt if I didn't do what they wanted I would probably be railroaded on the new charges. I was ready to testify about anything, or about anybody, just as

they wanted, and I did this, trying to help myself. I think that almost anybody would have done the same if they had been in the same position. I have been hounded about the matter ever since I plead guilty in 1956 and didn't know what else to do. A person gets in a spot like that and they are willing to tell any sort of untruths or any kind of story to try to help themselves. I don't guess this will interest you very much, but I know you have heard all kinds of stories about what happened so thought I would explain some of it to you. I know I did Ing a wrong and wish I had the opportunity to right it. Guess there is not much news from here so I will close and hope you will write soon and tell me the news. I never hear from any one other than Sandy and you. Maybe you can give me some advice on everything. If there is anything you want to ask me then feel free to do so. How is the family and everyone? It won't be long until you will be playing golf. Hope you drink a beer on the ninth hole for me.

Hope you find time to write a few lines. How is George and Dora? Let me hear from you now.

/s/ KEN.

From C. K. Brownfield, 15265.

April 9, 1958.

To Mr. Joseph J. Janas, 6007 S. Komensky,
Chicago, Ill.

Dear Joe:

I wrote a couple of letters this week but still have one left so thought I would drop you a few lines. How are you and the family? Fine I hope. Guess both boys are growing like weeds and doing good in school. How are you doing in your bowling and golf? It won't be long until you will be out on the green trying to hit the ball hard and straight. Also be sure and put straight. Ha! Ha!

There is not much I can say in regard to the trial at Anchorage. Guess it wouldn't interest you anyhow. When I was taken back there I did not want to go but in order to get the charges against me dropped I was told I would have to testify. Also was told what I would have to say. Guess it didn't make any difference if it was the truth or not. Anchorage was not interested in the truth, just wanted to convict Ing any way possible. I was perfectly willing to go along with them in any story they wanted as they told me it was the only way I could help myself in regard to my charges. Guess that is neither here nor there now. All they were interested in was convicting Ing even if it was necessary to go to any length to do it. Naturally I was under pressure when I was forced to testify. Guess that is all for that. We have been having nice weather here and have been able to go out on the recreation field on the week ends. Sure is good to get a little fresh air and sunshine. We will probably have some rain this month and then have a bit of summer weather. I hope so anyhow.

Well I will close for now and hope you write how the golf is and all the news. How are George and Dora? Tell them hello for me.

/s/ KEN.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 9, 1958.

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON

1. The Court erred in denying defendant's motions to dismiss the indictment.
2. The Court erred in denying defendant's motion for judgment of acquittal, made at the close of the evidence offered by the Government.
3. The Court erred in denying defendant's renewed motion for judgment of acquittal, made at the close of all the evidence.
4. The Court erred in refusing to give the instruction requested by the defendant, that the witness John Walker and the witness Claude Brownfield were accomplices.
5. The Court erred in refusing to give the instruction requested by the defendant that the witness John Walker was an accomplice.
6. The Court erred in refusing to instruct the jury as requested that the witness Claude Brownfield was an accomplice.

7. The Court erred in instructing the jury as follows:

“This indictment is a mere allegation of the charges against the defendants and is not, in itself, any evidence of guilt, and no juror should permit himself to be influenced against the defendants because of the fact that an indictment has been returned against the defendants.

“To this indictment the defendants, James Burton Ing, Raymond Wright, and Charles E. Smith, have pleaded not guilty, which pleas are a denial of the charges and put in issue every material allegation of the indictment.

“It, therefore, becomes the duty, and it is incumbent upon the Government to prove every material element of the charges contained in the indictment to your satisfaction beyond a reasonable doubt.

“The exact date of the commission of the crime charged in the indictment is not material provided the crime was committed within five years prior to the date of the indictment. It is sufficient if you find the crime so charged was committed on any date within five years prior to the date of the indictment.

“The law presumes every person charged with crime to be innocent. This presumption of innocence remains with the defendants throughout the trial and should be given effect by you unless and until, by the evidence introduced before you, you are

convinced the defendants are guilty beyond a reasonable doubt,"

to which objection was made and exception allowed.

8. The Court erred in instructing the jury as follows:

"In this case, the Government relies in part upon the testimony of admitted accomplices.

"You are instructed that an accomplice is one who, being of mature age and in possession of his natural faculties, cooperates with or aids or assists another in the commission of a crime.

"With respect to such testimony, the laws of Alaska provide as follows:

" 'A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, and the corroboration is not sufficient if it merely shows the commission of the crime or the circumstances of the commission.'

"The provision of Alaska law which is quoted means that the corroborating evidence required to be given before conviction can be had must, in itself, and independent of all accomplice testimony, tend to connect the defendants with the commission of the crimes charged against them, and must tend to show not only that the crimes have been committed, but that the defendants were implicated in them. Corroborating testimony need not be direct; it may

be circumstantial; and, whether direct or circumstantial, if it corroborated the testimony of an accomplice in a material particular and tends to connect the defendants with the crimes charged, it is sufficient to meet the requirements of the statute and support a conviction.

“This law does not mean that the corroborative evidence alone must be sufficient to justify conviction, but it does require that unless in your judgment the corroborative evidence alone and by itself tends to connect the defendants with the crimes charged, the defendants should be acquitted, no matter how convincing the accomplice testimony may be.

“If you find that the corroborative evidence alone, if any, does tend to connect the defendants, or any of them, with the commission of the crimes charged against them, then you should consider all of the evidence against such defendant or defendants, including all accomplice testimony, and if all of the evidence, including both that of the accomplices and that of the corroborative testimony, convinces you beyond a reasonable doubt of the guilt of the defendants, or any of them, you should render a verdict accordingly; otherwise the defendants, or any of them, should be acquitted.

“Section 58-5-1, Compiled Laws of Alaska, 1949, provides in part as follows:

“‘That the testimony of an accomplice ought to be viewed with distrust.’

“You are accordingly instructed that the testimony of the government witnesses, self-confessed accomplices in the commission of the crimes charged in the indictment in the case now on trial before you, ought to be viewed with distrust,”

to which objection was made and exception allowed.

9. The Court erred in instructing the jury as follows:

“You are instructed that all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, are principals, and to be tried and punished as such. However, one who is merely present, but does nothing to aid, assist or abet or induce the other to commit the crime is not guilty. It must be shown that he actually participated in its commission from which it follows that if the evidence warrants you may find one of the defendants guilty and the other not guilty. Therefore, if you find from the evidence beyond a reasonable doubt that the defendants, acting either in concert or in pursuance of a previous understanding or common design, committed the crime charged in the indictment, each would be guilty as principal regardless of which of them uttered and published the checks in question, for it is immaterial to what degree any one of them participated in the commission of the crime so long as you find beyond a reasonable doubt that any one knowingly

aided, abetted or assisted the others, or any of the others, in its commission,"

to which objection was made and exception allowed.

10. The verdict is contrary to the weight of the evidence.

11. The verdict is not supported by substantial evidence.

12. The Court erred in failing to grant the defendant's motion for a new trial.

13. Other manifest error appearing of record, to which objection was taken and exception reserved.

Dated at Anchorage, Alaska, September 3, 1958.

/s/ WENDELL P. KAY,
Attorney for Defendant
James Burton Ing.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 3, 1958.

[Title of District Court and Cause.]

APPELLANT RAYMOND WRIGHT'S STATE-
MENT OF POINTS TO BE RELIED UPON
ON APPEAL

Comes now Appellant Raymond Wright and advises the Court that on his appeal he intends to

rely upon each and all of the following points, to wit:

1. Insufficiency of the evidence to establish the charge or to support the verdict and/or judgment on the charge contained in the indictment.

2. That the District Court and the Judge thereof erred in denying appellant's motion made at the conclusion of all the evidence in the case for a judgment of acquittal.

3. That the verdict is contrary to the weight of the evidence.

4. That the verdict is not supported by substantial evidence.

5. That in the absence of any corroborating testimony other than that furnished by the accomplices, no question of fact remained to be submitted to the Jury.

6. That Section 66-13-59 of the Alaska Compiled Laws, Annotated, is controlling, and that in the absence of independent corroboration was sufficiently compelling to grant the motion for judgment of acquittal.

Dated this 10th day of November, 1958.

/s/ EVERETT W. HEPP,
Attorney for Appellant
Raymond Wright.

[Endorsed]: Filed November 10, 1958.

[Title of District Court and Cause.]

M. O. RENDERING ORAL DECISION ON
MOTION FOR NEW TRIAL(LS)

Before the Honorable J. L. McCarrey, Jr.,
District Judge.

Arguments having been had heretofore and on the 8th day of August, 1958, September 29, 1958, and October 31, 1958;

It Is Ordered, Court now indicates that it would not grant motion for new trial based on the recantations of the witness Claude Brownfield, and that the matter should be disposed of by the Ninth Circuit Court of Appeals.

United States of America,
Territory of Alaska,
Third Division—ss.

I, the undersigned, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that this is a true and full copy of an original document on file in my office as such clerk.

Witness my hand and the Seal of said Court this 21st day of July, 1959.

/s/ WM. A. HILTON,

Clerk of the District Court.

By /s/ JO ANN MYRES,

Deputy.

Entered February 6, 1958.

[Endorsed]: Filed July 23, 1959, U.S.C.A.

In the District Court for the District of
Alaska, Third Division

Cr. No. 3772

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES BURTON ING, RAYMOND WRIGHT,
CHARLES E. SMITH, JOHN WALKER,
DEWEY TAYLOR, and LEMUEL, ASHLEY
WILLIAMS,

Defendants.

Before: The Honorable J. L. McCarrey, Jr.,
U. S. District Judge.

TRANSCRIPT OF PROCEEDINGS

Anchorage, Alaska

February 19, 1958, 10:00 o'Clock A.M.

Appearances:

For the Plaintiff:

WILLIAM T. PLUMMER,
United States Attorney.

For the Defendant Ing:

WENDELL P. KAY,
Attorney at Law, and
T. N. GORE,
Attorney at Law.

For the Defendant Wright:

EVERETT HEPP,
Attorney at Law.

For the Defendant Smith:

BUELL A. NESBETT,
Attorney at Law.

The Court: This was the time set down to try the case of United States of America, Plaintiff, vs. James Burton Ing, Raymond Wright, Charles E. Smith, John Walker, Dewey Taylor, and Lemuel Ashley Williams, Defendants, Criminal No. 3772. Is counsel for the Government ready to proceed at this time?

Mr. Plummer: Your Honor, I am ready to proceed with the picking of the jury. I am expecting a long distance call which will probably affect the scope of the evidence I am going to present. I should have it before noon. I advise the court of that because I will want it. I think I owe it to the court and to the jury and to the defendants, certainly, to have that information so that my opening statement will show what I am going to prove. If it's not here by noon or by the time we finish picking the jury I will at that time ask the court for a continuance until the afternoon.

The Court: Is there objection, counsel for the defense?

Mr. Kay: On behalf of the defendant Mr. Ing, I have no objection to the brief, possibly, delay outlined by the United States Attorney, your Honor.

The Court: Very well. I presume other counsel take the same position.

Mr. Nesbett: I have no objection.

Mr. Hepp: My name is Everett Hepp. I am from Fairbanks. I'd like to be entered as attorney of record for the defendant [6*] Raymond Wright.

The Court: Very well. Motion is granted.

Mr. Hepp: I have no objection to the delay.

Mr. Kay: It is understood Mr. T. N. Gore, also of Fairbanks, is co-counsel with me on behalf of the defendant James Ing.

The Court: Very well.

Mr. Plummer: I will promise the court and counsel that the delay, if in fact I do have to ask for it, will be of very short duration.

The Court: Thank you. Now, to make the record clear, Mr. Hepp has entered his appearance. Will you do that formally, Mr. Hepp, at your convenience?

Mr. Hepp: Yes, I will do that.

The Court: Mr. Gore, will you likewise do the same thing?

Mr. Gore: Yes, your Honor.

The Court: Mr. Nesbett appears for the defendant Smith. I think that covers all the defendants. Are there any other counsel? Hearing none, then you may call the roll of the jury, please.

(Thereupon, the Deputy Clerk called the roll of the Petit Jury.)

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Deputy Clerk: All members of the Petit Jury present, your Honor.

The Court: Since we have visiting counsel from out of [7] the City of Anchorage, I'd like to advise Mr. Hepp and Mr. Gore that it is the practice of this Court under the rules to question the jurors on voir dire and you, of course, are allowed to supplement those questions after the Court has concluded its examination on voir dire.

I point out to you, Mr. Kay has submitted to the court a number of questions which he has asked that the court put to the jurors. Mr. Nesbett, do you have any questions?

Mr. Nesbett: I have some I'd like to submit at this time.

The Court: Very well. Will you hand it to the bailiff then, please?

Also, out of fairness to visiting counsel, I'd like to advise you that it is the practice of the court to draw 12 names and they take their places in the box. Then, thereafter, all the jurors are sworn at one time to preclude the lengthy swearing of each juror individually and I call this to your attention in case you have any exception or have any suggestion you want to make to the court at this time in respect thereto. Mr. Nesbett and, of course, Mr. Kay are familiar with that type of procedure.

Now, Mr. Hepp, do you have any prepared questions you would like to submit to the court at this time?

Mr. Hepp: No, I have none.

The Court: Very well. I think your co-counsel

have covered most of the aspects of that phase and it is very helpful [8] to the court. The court appreciates counsel doing that.

Would the clerk of the court then please put all the names in the box and draw 12 names and as your names are drawn will you please come forward and take your places in the box in the order heretofore outlined to you.

Whereupon, the Deputy Clerk proceeded to draw from the trial jury box, one at a time, the names of the members of the regular jury panel of petit jurors and after examination by the Court, counsel for both plaintiff and defendants exercised their challenges against said jurors, until the jury of twelve jurors was complete, and the Deputy Clerk then proceeded to draw from the trial jury box, two names of the members of the regular jury panel of petit jurors to serve as alternates and after examination by the Court, both plaintiff and defendants exercised their challenges against said alternate jurors, until the alternate jurors of two was complete. Whereupon, said jury was duly sworn to well and truly try the cause and a true verdict render in accordance with the evidence and the instructions of the Court.

The Court: Very well. Mr. Plummer, you may make your opening statement at this time.

(Whereupon, William T. Plummer, United States Attorney, made his opening statement.)

The Court: Very well. Now, do counsel for [9]

the defense desire to make their opening statements at this time?

Mr. Kay: I wonder, your Honor—may I inquire as to how long the court intends to continue in session this evening?

The Court: Well, what is the pleasure of counsel?

Mr. Kay: I wondered if you had a 4:30 engagement.

The Court. I do not have.

Mr. Kay: I see. Well then, may I confer briefly here?

The Court: Yes, you may do so.

Mr. Nesbett: Your Honor, as to the defendant Smith, we, of course, reserve in accordance with the statute our right to make an opening statement at the close of the Government's case. At this time I do not desire to make an opening statement.

The Court: Very well. Mr. Hepp.

Mr. Hepp: My position for the defendant Raymond Wright is the same as stated by Mr. Nesbett. It is rather awkward with three defendants with antagonistic interests to make a combined opening statement so I would like to reserve.

The Court: Very well. Mr. Kay.

(Whereupon, Wendell P. Kay, attorney representing Defendant Ing, made his opening statement.)

The Court: Mr. Plummer, you may call your first witness.

Mr. Plummer: I notice, your Honor, it is nearly

time for the break. May we have our break before calling the witness?

The Court: We had it a few moments ago. I am—— [10]

Mr. Kay: It has been an hour. I will join with Mr. Plummer.

The Court: Very well. Court will go into recess for a period of 10 minutes.

(Thereupon, at 4:10 o'clock p.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. Mr. Plummer, you may call your first witness.

Mr. Plummer: I request that Mr. Taylor take the stand.

DEWEY TAYLOR

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

Mr. Hepp: May it please the Court, before any questions are put to this witness, I'd like the Court to invoke the rule regarding other witnesses.

The Court: Would you, for the record, state your reason.

Mr. Hepp: Well, the conventional reason that the testimony elicited from one is heard by others and sometimes may bear on their credibility. We believe we have a right that a witness' statement

(Testimony of Dewey Taylor.)

is his own and original statement and not even [11] possibly influenced by what he may have heard another witness say.

The Court: Now, to familiarize you, counsel, with the Court's practice here at Anchorage. The Court has always permitted the investigating officer, one only, to remain in the courtroom and also that if the defendant invokes the rule then that defendant will take the stand as the first witness, if he takes the stand at all.

Mr. Hepp: Well, I fail to understand the Court's position in that matter. There are three defendants. Which one of them would be first?

The Court: Yours, because you are invoking the rule.

Mr. Hepp: I wasn't acquainted with that.

The Court: That is why I was trying to call it to your attention.

Mr. Kay: May we confer a minute on that.

The Court: Yes, you may do so.

(After defense counsel conferred, the following proceedings were had:)

Mr. Hepp: May it please the Court, the defendant Wright's position in this matter is that he would like to have the rule invoked, but objects to the other portion of the rule which the court has stated here in connection with having to lead off with the defense and take the witness stand first.

The Court: And you understand that's a condi-

(Testimony of Dewey Taylor.)

tion only [12] in the event that he is called as a witness at all?

Mr. Hepp: Yes, I understand that. I would like the record to show my objection to that.

The Court: Your objection may stand. The ruling of the Court will also stand.

The Court at this time then instructs all witnesses who may be called to absent themselves from the courtroom. I will look to counsel to advise the Court as to whether or not any of their witnesses are in the courtroom.

Mr. Plummer: Everybody that is going to be called as a witness for the Government, you will have to wait out in the foyer.

The Court: Now, that would also be true—I understood Mrs. Ing might be called, Mr. Kay.

(Thereupon, witnesses leave the courtroom.)

Mr. Plummer: I think the Government witnesses are gone, your Honor.

The Court: Mr. Hepp.

Mr. Hepp: I'd like to address the Court one more time. May it please the Court, there is an understanding as to the nature and type of raising objections for defense counsel. The thought has certainly occurred to me in order to dispell any possible inferences drawn by any of the jurors by reason of the fact one or more of the defendants do not make the objection that he acquieces in that testimony or that offer that is made to the Court, and I, therefore, ask the Court if it would [13]

(Testimony of Dewey Taylor.)

instruct the jury the essence of the manner of objecting which is permitted to counsel. This, of course, is brought about by the fact there are three of us independently.

The Court: Ladies and gentlemen of the jury: At the bench the subject came up as to whether or not all counsel would necessarily have to get up and make an objection in order to have one as to a ruling of the Court. Mr. Hepp, for example, said it would be more or less repetitious to have each one get up individually to object each time as an objection came up and without objection on the part of the Government it was agreed at the bench that an objection by one of defense counsel would avail to the other two defendants. I instruct you that that is the agreement that the Court and counsel have entered into and so you may consider that in your overall consideration of the case.

Does that cover the subject, counsel?

Mr. Hepp: Thank you, your Honor.

The Court: Now, of course, I'd like to have it understood that that would not be true as to instructions and things of that nature. I have been trying to consider that a little bit since you made that request, Mr. Hepp. There may be other cases and circumstances when it likewise should not apply, however, as a general premise I see no objection to that. Is that the practice of Judge Forbes in Fairbanks, for example?

Mr. Hepp: I have known it to occur once where

(Testimony of Dewey Taylor.)

joint [14] defendants with antagonistic interests, each one represented by his own counsel.

The Court: Of course, that is the only basis for granting it now because I understood there are antagonistic interests by the respective defendants. Aside from that it would not be proper to enter into such an agreement or understanding. Very well. Then you may proceed, Mr. Plummer.

Mr. Plummer: Thank you, your Honor.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Dewey Taylor.

Q. Would you speak up?

A. Dewey Taylor.

Q. Where do you reside, Mr. Taylor?

A. 305½ Flower Street in Mountain View.

Q. And are you the Dewey Taylor that is mentioned in this indictment? A. I am.

Q. Have you previously been before this court and pleaded guilty to Counts 12, 13, 14, 15, 16, 17 and 18 of the indictment? A. I have.

Q. Do you know the defendant in this case, James Burton Ing? A. I do.

Q. Do you know the defendant in this case, Raymond Wright? A. I do. [15]

Q. Did you have occasion, sir, to have a conversation with Mr. Wright during the month of August, 1956, in Fairbanks? A. I did.

Q. And where did this conversation occur?

Mr. Hepp: I object to that unless proper founda-

(Testimony of Dewey Taylor.)

tion is laid that it pertains to the charges before this court. It is a very general question; could invite a possible dangerous answer which I have no chance to evaluate. I think he should point out its relationship to the charges before the Court. A conversation could cover anything.

Mr. Plummer: I was afraid I would be accused of leading the witness if I didn't lay a foundation first.

The Court: Well, an objection has been made. I understood that counsel for the Government was in the process of laying that foundation. If it is not properly laid then I would suggest that you make a further objection, Mr. Hepp. In the meantime, would you please lay the foundation, Mr. Plummer?

Q. (By Mr. Plummer): Where did this conversation occur, sir?

A. In Mr. Wright's car.

Q. And about what date, if you recall?

A. Oh, it was during the first part of the week or the week end before Labor Day.

Q. And who all was present during this conversation, sir? A. Just he and I. [16]

Q. When you say he and I, you mean Raymond Wright and yourself? A. That is right.

Q. And will you tell us what that conversation was about, sir?

A. Well, he asked me if I wanted to make some easy money. Well, I was a little bit destitute, kind of needed some money. I said yes.

(Testimony of Dewey Taylor.)

Q. Now, if you will tell the conversation to the best of your recollection?

A. Oh, he just informed me about this caper that was supposed to take place down here in Anchorage and——

The Court: Pardon me. Would you read that first part back.

(Thereupon, the Reporter read Answer Line 9 above.)

The Court: Thank you.

Q. (By Mr. Plummer): What do you mean by caper, Mr. Taylor?

A. Well, the passing of the M.K. checks and my instructions as to what I was to do.

Q. And would you tell us what the conversation was, as you recall it, on that occasion, sir, between you and Mr. Wright?

A. Well, he suggested I go to the Territorial Police and get a driver's license and conversation come up about what name to get and so the first name that we decided on was James C. Woods. So I went to the Territorial Police and got the identification. [17]

Q. And did he advise you, sir, in any other respect or any other regard at that time?

A. Well, he told me we would leave Friday, sometime Friday evening, and to keep my mouth shut about it.

Q. That is to leave Fairbanks sometime Friday evening and where were you going, sir?

(Testimony of Dewey Taylor.)

A. To Anchorage.

Q. And prior to your leaving did Mr. Wright do anything to you?

Mr. Hepp: Object to that. I believe that some offer should be made which we can evaluate.

The Court: Yes. Objection sustained.

Q. (By Mr. Plummer): Was a picture taken of you prior to your departure from Fairbanks?

A. It was a picture taken but it didn't come out well, so there was another one taken of me after the morning—before the next morning.

Q. And who was that picture taken by, sir?

A. Mr. Wright.

Q. And where was it taken?

A. I beg your pardon?

Q. Where was it taken, if you recall? Where were you at the time the picture was taken, sir?

A. Let me see. Well, he had taken one of me at his place in Fairbanks and that one didn't come out, so, well—so he took [18] one of me that morning in the rooming house where I stayed.

Q. And did you retain custody of that picture after it was taken?

A. No, it was stamped on an identification card.

Q. Now, did Mr. Wright tell you what your part of this M.K. check caper was going to be?

A. He did.

Q. Would you tell me what your part was?

A. Well, I was supposed to—wait a minute—how do you mean?

(Testimony of Dewey Taylor.)

Q. Well, just tell me what his instructions were, if in fact he gave you any instructions.

A. You mean prior to going to Anchorage or what?

Q. Yes, sir.

A. Well, on the way down he told me I was supposed to pass the checks and I would have the proper identification and if anyone asked me as to where I was working, as to the identification, I was supposed to say I was working up in Point Barrow.

Q. Any instructions about how you were to dress?

A. As a working man in work clothes.

Q. Now, was any mention made about the pay you were supposed to get for doing this, the cut you were supposed to get?

A. I was supposed to get 25 per cent, half of what I took in.

Q. Now, did you in fact go to Anchorage?

A. I beg your pardon? [19]

Q. Did you in fact go to Anchorage, Mr. Taylor?

A. I did.

Q. When did you depart Fairbanks for Anchorage? A. Left late Friday evening.

Q. And how did you go down to Anchorage from Fairbanks?

A. We came in Mr. Wright's car.

Q. When you say we, who do you mean, sir?

A. Myself, John Walker and Raymond Wright.

Q. And did you have any conversation about

(Testimony of Dewey Taylor.)

what you were going to do when you got to Anchorage on the way down?

A. Well, he told me that I would get a room and that I was supposed to just pass the checks. That is all.

Q. Any particular locale, any place you were supposed to pass them or not pass them?

A. Any place where possible.

Q. Was the word East Chester Flats mentioned?

A. Yes, I was supposed to steer clear of East Chester Flats because I was known there as a musician and entertainer.

Q. When did you arrive in Anchorage, if in fact you did arrive?

A. Oh, about 11:30 the Friday night preceding the Labor Day week end.

Q. And when you say we again, you mean who?

A. Myself, Wright and Walker.

Q. And what did you do upon arriving in Anchorage, sir?

A. Well, we went to the Hot Spot—was the International Club [20] then—and had a few drinks.

Q. And did you and Walker and Wright stay together? A. No, we did not.

Q. Did you stay together while you were at the Club International?

A. I drank—had a few drinks, like that, then we left.

Q. And did you leave there together?

A. We did.

Q. And where did you go, sir?

(Testimony of Dewey Taylor.)

A. The place now—I couldn't find it now if I had to. I mean, I don't remember the place. It was dark. It wasn't on the same street as the Hot Spot or the Club International. It was on another street.

Q. Was it some place down in the Flats, sir?

A. Yes.

Q. And what did you do after you arrived at that place?

A. Well, I went to this room and went to bed.

Q. And did all of you stay there?

A. No, just Walker and I.

Q. And was anybody else present that you knew?

A. I didn't see anyone. I didn't know anybody. I could hear voices. I imagine there was other people in the house.

Q. Did Mr. Wright stay with you?

A. No, he did not.

Q. Do you know where he did stay?

A. No, I don't. [21]

Q. When, if any time, did you again see Mr. Wright?

A. The following morning, Saturday morning.

Q. And would you tell us what happened on that occasion, sir?

A. Well, he took this picture of me and put it on the identification card and gave me 15 checks.

Q. And were they Morrison-Knudsen checks?

A. They were.

Q. And what else happened, sir?

A. Then he gave Walker some checks, I don't know how many, and we took this car. We went out

(Testimony of Dewey Taylor.)

to Spenard and he told me to cash them wherever possible.

Q. And did you in fact do so?

A. That is what I did.

Q. What did you do with the purchases, merchandise you purchased, sir?

A. Put it in the car.

Q. And what did you do with the money that you got?

A. I kept that in my pocket until I got back.

Q. And what did you do with it then, sir?

A. I turned it all over to Mr. Wright.

Q. Now, this was on a Saturday you are telling us about, is that right?

A. That is right.

Q. All right. Will you tell us if the same thing occurred again on Sunday? [22]

A. It did.

Q. Do you know whether or not Mr. Wright passed any of the checks?

Mr. Hepp: Object to that unless—how would this witness know that?

The Court: The question was, as I recall, do you know whether or not Mr. Wright passed any checks.

Mr. Hepp: Then I ask for just a yes or no, then—

The Court: Well—

A. I do not know that anyway.

The Court: Then it is not before the Court, having answered without the Court ruling. You may proceed.

(Testimony of Dewey Taylor.)

Q. (By Mr. Plummer): Did you as a matter of fact cash all the original 15 checks that were given to you? A. I did.

Q. What did you do after the original 15 checks were exhausted? A. I was given 15 more.

Q. And who gave them to you?

A. Mr. Wright.

Q. And did you cash those, sir?

A. All excepting two.

Q. That would make 28 checks in all that you cashed, is that correct, sir?

A. That is right. [23]

Q. Now, Mr. Taylor, approximately how much did you receive in cash for the 28 checks that you testified that you cashed?

A. You mean as my part or what?

Q. No, I mean the overall total that you got back in cash? A. About \$4,600.00.

Q. And out of that \$4,600.00 how much did you receive as your cut? A. \$2,300.00.

Q. Now, did you receive any of the merchandise that you purchased?

Mr. Hepp: Object to that. I don't think this witness has testified that he purchased any merchandise. Counsel said something about what happened to some merchandise.

The Court: Objection sustained.

Q. (By Mr. Plummer): Did you as a matter of fact purchase any merchandise when you cashed the checks?

(Testimony of Dewey Taylor.)

A. I had to in order to cash them.

Q. And did you—I will ask the question now, your Honor. Did you retain any of this merchandise that you purchased?

A. I bought an electric razor.

Q. Is that the only item you purchased and retained? A. That is all.

Q. And do you still have that, sir?

A. No, I don't. [24]

Q. Do you know—tell us what happened to it.

A. I traded it off in Seattle because it never worked for me.

Q. And now, will you be good enough to tell us, sir, when you left Anchorage, if in fact you did leave?

A. The following Monday morning preceding Labor Day between 10:00 and 11:00 o'clock.

The Court: Pardon me. That answer isn't understandable. You say, the following Monday morning preceding Labor Day.

The Witness: Before Labor Day. No, that was Labor Day morning. That is right. Labor Day morning was on a Monday.

The Court: Thank you.

Mr. Plummer: Thank you, your Honor.

Q. (By Mr. Plummer): And about what was the time again?

A. Oh, approximately—I can't be sure. I think it was between 10:00 and 11:00, something like that.

Q. What was your reason, if any, for leaving at that time?

(Testimony of Dewey Taylor.)

A. We were ready to go back to Fairbanks.

Q. Now, when you say we, were you by yourself or was someone with you?

A. No, the same three that came down.

Q. You, Mr. Wright and Mr. Walker?

A. That is right.

Q. How did you go back?

A. In the same car we came in. [25]

Q. Now, did you make any stops en route? Did you stop in Palmer?

A. We stopped in Palmer, yes.

Q. And were any checks cashed in Palmer?

A. Yes, I cashed one at Koslosky's, and a filling station.

Mr. Kay: Your Honor, I object. I probably should have objected earlier but the answer was given before I had an opportunity to object. I object to any attempt to prove the commission of other crimes other than those alleged in the indictment.

The Court: The objection is sustained. I think the reason is obvious.

Q. (By Mr. Plummer): Now, with the exception of Palmer did you make any stops en route? I take it that you eventually, all three, arrived back in Fairbanks, is that right? A. Yes.

Q. Now, did you stop any place along the highway en route to Fairbanks after leaving Palmer?

A. We stopped once that I know of. No—yes, we stopped.

(Testimony of Dewey Taylor.)

Q. And would you tell me what was the reason for you stopping at that time, sir?

Mr. Hepp: I object unless it relates to the issues before this Court.

Mr. Plummer: It does. I will advise the Court that.

The Court: On that promise the objection is overruled. You may proceed. [26]

Q. (By Mr. Plummer): Would you tell us why you stopped on that occasion, sir?

A. Well, we stopped—Mr. Wright instructed me to get rid of the clothes that I had worn in Anchorage.

Mr. Hepp: I object to that as not responsive to the question. He asked where he stopped.

Mr. Plummer: I asked him why he stopped, not where he stopped.

The Court: The first question before was where he stopped and now you rephrase your question as to why he stopped. I think you are correct. The objection is overruled.

Q. (By Mr. Plummer): Why did you stop, sir?

A. We stopped to dispose of the clothing that I had worn in Anchorage.

Q. And did you in fact dispose of them?

A. I did.

Q. How did you do that?

A. I burned them.

Q. And did you stop another time prior to arriving at Fairbanks?

A. Yes, we stopped one more time.

(Testimony of Dewey Taylor.)

Q. And would you tell me why you stopped on that occasion?

A. Well, we met some people in a car.

Q. And were they driving the same direction you were?

A. No, they were coming the opposite direction, from Fairbanks. [27]

Q. Were they people that you knew?

A. I knew one of them that I can remember.

Q. And did that car stop also?

A. Yes, it did.

Q. And did you alight from your car and have some conversation?

A. Well, we stopped and passed the bottle around.

Q. And the defendant Wright was present at that time, was he? A. He was.

Q. And did he have some conversation with this party? A. Yes, he did.

Q. And what is the party's name?

A. Richard Burge.

Q. And will you tell us what that conversation was with Mr. Burge?

A. Well, he showed Mr. Burge a suitcase of money.

Q. The money that you had turned in to him?

A. The money, it was from the—down from this thing down here.

Q. All right. Then what happened after that, sir. A. We proceeded to Fairbanks.

(Testimony of Dewey Taylor.)

Q. And what happened after you got to Fairbanks?

A. We unloaded the merchandise and——

Q. Would you tell me where you unloaded the merchandise, sir?

A. We unloaded the merchandise at the Beachcomber, Mr. Wright's residence.

Q. And would you tell us where you placed it in the residence, if you know, if you remember? [28]

A. We placed the perishables in the kitchen and took the rest of the merchandise upstairs.

Q. What happened next, if anything, sir?

A. Then I was paid off and told to keep my mouth shut.

Q. Do you recall anything about that conversation?

A. Yes, I was told to keep my mouth shut or otherwise I could lose my life.

Q. And that conversation was with Mr. Wright?

A. It was.

Q. And he is the one that paid you off?

A. That is right.

Q. And what again was the amount that he paid you? A. \$2,300.00.

Mr. Kay: Object now as showing—attempting to show again the commission of other crimes. The amount includes, apparently, checks other than those alleged in the indictment and, as I said, I didn't get an opportunity to object when he first testified concerning this total amount but it far exceeds the amount claimed in the six counts in the indictment

(Testimony of Dewey Taylor.)

and it is an attempt to show separate crimes and I object to it.

Mr. Plummer: I do not intend to show any separate crimes and I didn't allege any separate crimes and I am not trying to prove any separate crimes.

Mr. Kay: Then you should have no objection to withdrawing the question. [29]

Mr. Plummer: I am asking the question. He testified he paid him over—I asked him how much. He said \$2,300.00. Certainly there is no indication except by your mentioning it of other crimes.

Mr. Kay: That exceeds the amount contained in the six counts of the indictment.

The Court: Well, of course, there again I haven't tabulated it. I don't know.

Mr. Kay: Well, I have and it exceeds it considerably.

Mr. Plummer: No mention was made of any crimes, your Honor, except by Mr. Kay.

The Court: The objection will be overruled to this last question, Mr. Kay.

Mr. Plummer: Would the reporter be good enough to read me back the last question I asked the witness?

(Thereupon, the Reporter read Question Line 12, Page 29 and Answer Line 13, Page 29.)

Q. (By Mr. Plummer): What did you do next after that, if anything, sir?

(Testimony of Dewey Taylor.)

Mr. Hepp: Excuse me. I didn't hear the question.

The Court: What did you do next after that, if anything?

Mr. Hepp: I object unless that is shown to relate to the issues before this Court or is connected with the charges that are contained in the indictment.

Mr. Plummer: It certainly does, your [30] Honor.

The Court: On your promise that it will, the objection is overruled. You may proceed.

Q. (By Mr. Plummer): What did you do next then, if anything, Mr. Taylor?

A. I took Mr. Walker to the airport but he missed the plane.

Q. And what happened then?

A. Then we decided that he would ride Outside with me.

Q. Now, was it your testimony that you knew the defendant Raymond Wright here?

A. It was.

Q. And did you have occasion to see him on March 12, 1958? A. I did.

Q. And where did you see him?

Mr. Kay: March 12?

The Court: Yes.

Q. (By Mr. Plummer): And where did you see him? A. Out on my job here in town.

Mr. Kay: That is next month.

Mr. Plummer: I am sorry, February 12. I stand corrected.

(Testimony of Dewey Taylor.)

Q. Did you see him on February 12, 1958, sir?

A. That is this one, yes.

Q. And where did you see him, sir?

A. Out on my job. Out on my job at the Club Oasis. [31]

Q. And what happened on that occasion, if anything, sir?

A. Well, I am a musician and I play with the band on the bandstand, my partner and I, Ralph Smith, were playing on my job. Mr. Wright came over to me and told me, he said, "I heard that you made a deal."

Mr. Hepp: Just a moment. I don't see the relationship of this, certainly, with the——

Mr. Plummer: Let us approach the bench and see if we can see the relationship.

Mr. Hepp: Yes, I would like to see the relationship.

Mr. Plummer: May we approach the bench?

The Court: You may do so.

(Whereupon, all counsel approached the bench and the following proceedings were out of the hearing of the jury:)

Mr. Plummer: I propose to show that on the 12th of February, 1958, the defendant Wright went to the Club Oasis where the defendant Taylor is employed and at that point he went up first to the bandstand and made threats to the defendant Taylor if he testified in this case. A short while later

(Testimony of Dewey Taylor.)

there was an intermission. The defendant Taylor then went up to the bar. The defendant Wright was at the far end of the bar. He talked in a loud voice, loud enough so his voice would carry over to the defendant Taylor, talking about canaries singing and about taking a revolver and shooting the gun and shooting the lights out of the pinball machines that were close by there. He then made the remark loud enough so the defendant Taylor could hear him that it would be better to shoot the canary, or words to that effect, rather than to shoot the lights out of the pinball machines. Subsequent to that he tried to buy the defendant Taylor a drink. The defendant Taylor declined. The defendant Taylor's partner, Ralph Smith I believe his name is, replied in a voice loud enough for Mr. Wright to hear that Mr. Wright was not the only good shot present in the club. Mr. Wright then came around and an altercation occurred so that he knocked the——

The Court: When you say he, whom do you mean?

Mr. Plummer: Wright knocked Smith off of the stool. While he was getting up he caught him with a punch. Smith ran over and got a .22 pistol and in the meantime the defendant Wright was advancing toward the defendant Taylor and when he saw the man with the pistol he grabbed the attorney, Gore, and used him as a shield so that Smith couldn't shoot him. My purpose for offering the testimony is to show that the defendant Wright

(Testimony of Dewey Taylor.)

made threats against the defendant Taylor to keep him from testifying in this case.

The Court: Mr. Hepp.

Mr. Hepp: Well, there is certainly a portion there at the outset of his account here where I believe the challenging talk was between this witness here and one other person, not the defendant Wright, and I don't think that the defendant [33] Wright would be bound by threats that I think that this other man—his name escapes me—that had threatened this witness here.

Mr. Plummer: I didn't ask him about anything that anybody else except Mr. Wright might have said to him.

The Court: That you would be limited to, to conversation or what occurred between this witness and Mr. Wright?

Mr. Plummer: Yes, sir.

The Court: Very well. Objection overruled.

(Whereupon, all counsel resumed their respective seats and the following proceedings were had in the presence of the court and jury):

The Court: You may proceed, Mr. Plummer.

Q. (By Mr. Plummer): Was it your testimony, Mr. Taylor, that you were playing on the rostrum, on the bandstand out at the Club Oasis on the night in question? A. That is right.

Q. And was it your testimony that the defendant Raymond Wright came up to you?

(Testimony of Dewey Taylor.)

A. That is right.

Q. And would you tell us what he said to you on that occasion, sir?

A. He said to me, "I hear you made a deal with the District Attorney," to which I didn't reply anything. He said, "Well, you will never live to reach the witness stand and if you do [34] and you get time, if you go to the penitentiary you will be killed and if you are released, if you hit the streets you will be killed, so you are dead, period."

Q. And did you subsequently that night have another conversation with the defendant Wright?

A. No, I didn't say anything to him. I thought it was wiser to keep quiet.

Q. Did he say anything to you at a later time that night?

A. Well, right after that intermission came up and I went to the bar, I went to one end of the bar, he and Attorney Gore were sitting at the other end of the bar. Now, whether they were serious or not I don't know, but they were drinking and Mr. Wright made a few disparaging remarks towards me and they kept talking about shooting the lights out of the pinball machines out there which were sitting directly beside me. Mr. Wright said, "No, hand me a pistol. I am a better shot than that. I can shoot that stool-pigeon," referring to me.

Mr. Hepp: Object to whatever opinion evidence as to what Mr. Wright was referring to.

The Court: The objection is sustained.

(Testimony of Dewey Taylor.)

Mr. Hepp: I ask that it be stricken from the record.

The Court: Motion is granted. It may be stricken from the record and the jurors are instructed not to consider the statement made by this witness, quote, "referring to him." [35]

Q. (By Mr. Plummer): Let me ask you, Mr. Taylor, how far away from Mr. Wright were you at the time that he made the remarks that you just mentioned?

A. Approximately, around 22 or 23 feet. From one end of the bar to the other.

Q. Would you tell us, if you can, the volume with which he said the remarks?

A. Beg your pardon?

Q. Did he say them in a loud voice or low voice?

A. Loud enough for anyone in the club to hear it.

Q. You had no difficulty in hearing the remarks?

A. No, I didn't.

Q. Did anything occur between the defendant Wright and you that night?

A. Well, he offered me a drink. He said, "Give the canary a drink," and I informed the bartender I was capable of paying for my own. I said I didn't care to have a drink with him. So he said, "Well, on second thought don't give the stool-pigeon—or the name that I couldn't say here—a drink. Why should I spend my money on him," something like that. So during that time my partner Ralph Smith

(Testimony of Dewey Taylor.)

was sitting around on the other side of the bar. He came around and sat beside me——

The Court: Pardon me. When you say he, whom do you mean?

A. Ralph Smith. [36]

The Court: Thank you.

A. My partner, he came around and sat——

Mr. Hepp: Just a moment. I believe he has responded to counsel's question. I think another offer should be made in connection with this last move. I have no chance to object.

Mr. Plummer: Let me ask this question, then. Perhaps this will remove the difficulty, if not remove your objection. Don't answer before he has a chance to object.

Q. Did the defendant Wright do anything at that time and place?

Mr. Hepp: I am not quite sure I know what time and place counsel means. At the time when this other man came around and sat down with him?

The Court: Yes. Is that true?

Mr. Plummer: Yes.

Q. Did the defendant Wright—do you care to object to the question?

Mr. Hepp: No, not if that is established.

Q. Did the defendant Wright take any action at that time of any kind?

A. Yes, he came around and sat on the other side of Mr. Smith.

Q. Were you all lined up at the bar?

(Testimony of Dewey Taylor.)

A. All three together.

Q. Who was on the left?

A. Mr. Wright was on the left. Mr. Smith was in the center. I was on the right. [37]

Q. Yes, sir. And did Mr. Wright and Mr. Smith have a conversation in your hearing at that time?

A. He said to Mr. Smith, he said, "Why—

The Court: Pardon me. Would you please state who that was when you say he. Now I think I know who you mean, but will you please say Wright said to Smith, if that is what took place.

A. Wright said to Smith, "Why do you want to stick your nose in there when it doesn't concern you?" Smith said, "Well, Taylor is my partner and we work together, we live together, and if anybody is going to do anything to him I am going to have something to say about it." And he said, "Oh, so you are going to deal yourself in on it, huh?"

The Court: Pardon me. Who said he is going to deal—

A. Wright said, "Oh, you are going to deal yourself in on this, huh," and in saying so he hauled off and hit Mr. Smith and knocked him off the stool and as he went to get up he hit him again.

Q. And what did Mr. Smith do in response to this?

A. Mr. Smith ran over to the bench. In the meantime, Raymond Wright turned around as if to start towards me and—

Mr. Hepp: I object to that and ask that it be stricken. I believe that purely calls for an impres-

(Testimony of Dewey Taylor.)

sion or opinion as if something were going to happen.

The Court: Objection sustained.

Mr. Hepp: And ask that it be stricken from the record. [38]

The Court: It may be stricken from the record and the jury is instructed not to consider the ad lib of this witness. You may proceed.

Q. (By Mr. Plummer): Would you be good enough, Mr. Taylor, to tell us not what your impression was but describe the physical movements that the defendant Wright took at that time, if any?

A. Well, at the time he knocked Smith down and Smith jumped up to run to the piano stool, well, he turned around towards me—I guess he thought maybe I was going to attack him.

Q. Just tell what he did.

Mr. Hepp: I ask that that be stricken and this witness admonished not to state what he thought was going to happen.

The Court: Mr. Taylor, you have a right to testify as to what you saw, what you heard, what you felt, and so forth, but you do not have have the right to testify as to inferences and presumptions. You may testify concerning movements or things of that nature. Would you be careful not to testify as to what you thought or what he thought and so forth.

A. All right. Mr. Wright turned towards me.

Q. (By Mr. Plummer): He moved towards you?

(Testimony of Dewey Taylor.)

A. He turned towards me. By that time Mr. Smith had the gun.

Q. And what happened then, if anything?

A. He ran—Mr. Wright ran and jumped behind Attorney Gore, [39] grabbed him, threw him in front of him as a shield, during the whole time shouting, "Give me my gun."

Q. And what happened next, if anything?

A. Mr. Wright put the pistol down. He was down near the door. I mean, Mr. Smith put the pistol down. He was down near the door, and he went on into the other room. Mr. Evans picked up the pistol and I went into the back room, too, and we locked the door.

The Court: Counsel, it is now 5:00 o'clock. The Court Reporter has been in session since 9:00 o'clock this morning and I am going way beyond her ability or endurance. I think without objection we better continue the trial at this time. If there is no objection, the trial of this case will be continued until tomorrow morning at the hour of 10:00 a.m. when it will be resumed at the American Legion Hall, which is located at the corner of Fifth and G.

As you know, ladies and gentlemen of the jury, I must now instruct you not to discuss this case among yourselves nor are you permitted to let others discuss it with you.

This court will stand adjourned until tomorrow morning at the hour of 9:30 a.m.

(Testimony of Dewey Taylor.)

(Thereupon, at 5:00 o'clock p.m., court was adjourned to the next morning, this case to be resumed at 10:00 o'clock a.m., February 20, 1958.) [40]

The Court: Will you please call the roll of the jury.

(Thereupon, the Deputy Clerk called the roll of the trial jury.)

Deputy Clerk: All members of the trial jury present, your Honor.

The Court: Very well. Mr. Taylor, will you please come forward and take the witness stand.

DEWEY TAYLOR

resumes the witness stand and testifies as follows on

Direct Examination

(Continuing)

Mr. Plummer: Before we resume the trial this morning I have several requests of the court. First, the witnesses have been excluded from the court. I will have quite a few witnesses probably coming over sometime along about 11:00 o'clock. I just wondered what we could do with them, where they could stay.

The Court: I told my secretary to instruct your secretary to put them in the cloak room. There are a number of chairs in there. I have checked and it is fairly commodious.

Mr. Plummer: One other question then. Mr.

(Testimony of Dewey Taylor.)

Charles Anderson is under subpoena to the Government. We did not intend to use him as a witness. We was trying to put him under subpoena so he could be excused from his police work so he could attend the trial and help us if we needed him. I ask at this time that [43] the subpoena be quashed so he could stay in the courtroom. I assure the court he will not be called as a witness.

The Court: Mr. Nesbett, do you have any objection? Just a moment, please. Where are the other defendants and counsel?

Mr. Nesbett: I don't know, your Honor. They were here.

Mr. Plummer: I am sorry, your Honor, I didn't realize——

The Court: I thought the bailiff would take care of that.

(All counsel and defendants are present at this time.)

The Court: To apprise counsel of the proceedings so far. I looked to the bailiff to see that counsel were here. I can't watch every detail, unfortunately. Mr. Taylor has been called to the witness stand, the jurors have been polled as to their presence this morning, and Mr. Plummer requests that the subpoena out against one Charles Anderson be quashed as they do not intend to call him as a witness. I think now I have apprised you of all the proceedings that have taken place so far. Do you recall anything else, Mr. Plummer?

(Testimony of Dewey Taylor.)

Mr. Plummer: No, your Honor, those are the only two points that I raised. I did raise another point about where the witnesses were going to stay.

The Court: That is correct, yes. Now, is there any objection, Mr. Kay or Mr. Nesbett or Mr. Hepp, as to those proceedings out of your [44] presence?

Mr. Kay: No, indeed, your Honor. I would like to make one statement this morning. I believe I am correct on the record and that is that the court undoubtedly inadvertently yesterday failed to admonish the jury as to their duty not to converse among themselves, so on so forth, concerning the case at the various recesses during the day. It was called to my attention that the court did do so at the evening.

The Court: That has been the practice of the court only at evening and noon.

Mr. Kay: Thank you.

The Court: However, to keep the record straight and since you have called it to my attention, ladies and gentlemen of the jury—and let the record show that all the jurors are back and present in the courtroom. Will counsel so stipulate?

Mr. Plummer: Yes.

Mr. Kay: Yes.

Mr. Hepp: Yes.

The Court: You are hereby instructed that you are not to discuss this case among yourselves nor are you permitted to let other people come and discuss it with you during recesses or at any time

(Testimony of Dewey Taylor.)

until the case is ultimately submitted to you for your consideration and then and only then may you discuss it among yourselves.

Mr. Kay: I wasn't implying the jury had done so, your Honor. [45]

The Court: No, I appreciate that. I am pleased to announce to counsel that I have been assured we will have the main courtroom tomorrow morning for our motion calendar, thank goodness, and also that the trial, of course, will be conducted in the main courtroom next Monday, so we won't have this problem because in the main courtroom we have accommodations for the jurors, as the jurors know, in the jury room so they do not have to go out among the public, of course, which is a service to them.

Very well. With that concluding the formalities, as far as I know, you may proceed with your direct examination.

Mr. Plummer: May the record reflect that this is the same Dewey Taylor that was a witness in the case yesterday afternoon and that he was called and administered the oath at that time.

The Court: Would you also remind him he is still under oath.

Q. (By Mr. Plummer): Mr. Taylor, you are still under oath. You realize that? A. I do.

Q. Thank you.

The Court: May this witness be excused for just a moment?

Mr. Plummer: As far as I am concerned, your Honor.

(The witness leaves the courtroom.)

The Court: I'd like to point out to counsel, since the rule has been invoked that I will look to counsel to see that their [46] witnesses are excluded from the courtroom as I do not know them. Mr. Hepp.

Mr. Hepp: May it please the court, during this time we would like to avail ourselves of examining the identifications and I do request that counsel be shown all identifications that are brought into this court before any question is put to a witness concerning the same.

Mr. Plummer: It has been my intention, your Honor, and it has been the practice of the court, of course, to reserve inspection of objects and documents and writings until they are offered in evidence. It's been done in every trial that has ever been conducted by this court.

The Court: Well, as I recall, Mr. Plummer, we have always identified them first, but surely counsel for the defense have the right to inspect them prior to the time that they are admitted in evidence.

Mr. Plummer: That is what I mean. The inspection is made at the time I make the offer into evidence.

Mr. Hepp: May I submit to the court that there could be very damaging statements made, perhaps inadmissible, in the course of laying a foundation on inadmissible instrument which the defense has no opportunity to object if he has not seen this

matter. I don't see any harm—I don't see how the Government could be prejudiced at all in showing these identifications to defense counsel and I submit that the practice is not an uncommon [47] one in the courts to allow an inspection at the time it is marked for identification and before any question is put to the witness concerning same and then the court, of course, can rule on any question that may arise at that time.

The Court: That has never been the practice here. Does Judge Forbes do it in Fairbanks?

Mr. Hepp: Yes, sir, consistently, sir, and I might add that his predecessor did and the other courts before in which I have practiced have allowed that, too.

The Court: This is the first time it has been requested in this court.

Mr. Hepp: I further submit unless the Government can show some prejudice by reason of an inspection of some document or instrument or other identification we believe that we would be entitled to see it and I so request.

The Court: I am inclined to agree with you.

Mr. Plummer: It may be, your Honor, that I will not even offer the things in evidence, and, of course, I can't have anything except what the witness tell what it is, if he knows, prior to making the offer. That is the foundation for the offer.

Mr. Hepp: The damage, if any, is done at that point, your Honor. If it develops to be inadmissible, these statements are made to the jury, they hear them, they are necessarily concerned over the

matter and the fact that the counsel has no idea of or intention in any given instance of admitting them into [48] evidence, he shouldn't offer them in the first instance.

The Court: I concede that point.

Mr. Plummer: Of course, your problem, if you have a problem which I don't concede you do, is corrected by the court instructing the jury to disregard the testimony on the particular item that is not admitted and certainly the jury is capable of following such an instruction.

The Court: Mr. Plummer, though, let me inquire. How can the Government be hurt by granting to counsel for the defense a perusal of these proposed exhibits prior to the time that they are identified by this witness?

Mr. Plummer: I assume probably not too much so. We have always done it the other way, that is the proper way to do it, and Mr. Hepp's request is I think unreasonable, but I will gladly give them to them at this time if the court so desires.

The Court: Since there has been a request let's proceed in that fashion then.

Mr. Plummer: I would request that Mr. Hepp keep them in order, although they are marked now. It doesn't make any difference.

(Witness Dewey Taylor returned to the courtroom and resumed the stand.)

(Documents handed to defense counsel; after inspection documents were handed back to Mr. Plummer.)

(Testimony of Dewey Taylor.)

Mr. Plummer: May I now approach the witness, your Honor? [49]

The Court: You may.

Q. (By Mr. Plummer): Mr. Taylor, will you take those documents or those objects and will you look first at the exhibit which has been marked for identification only as Plaintiff's Exhibit No. 1 and inspect it closely. Now, will you tell us what that is, sir?

A. Well, this is a Morrison-Knudsen check, or reasonable facsimile of.

Q. And will you give us the number of the check? A. Check No. 8903.

The Court: Speak a little louder so the jurors can hear.

A. This is Check No. 8903.

Q. Who is it made payable to?

A. Made payable to James C. Woods.

Q. Now, would you look at the reverse side of the check, sir. And is there any writing on the reverse side of the check, sir?

A. Say that again?

Q. Is there any writing, endorsement on the reverse side? A. Yes, there is.

Q. Would you tell me what that endorsement is?

A. James C. Woods.

Q. Now, will you tell me, if you know, who wrote James C. Woods on the reverse of that check?

A. I wrote it.

Q. And did you negotiate that check? [50]

A. I did.

(Testimony of Dewey Taylor.)

Q. Where did you negotiate it?

A. I negotiated this check—let me see. I don't know where I negotiated this one. It is not marked.

Q. All right. Would you look at the item, Plaintiff's Exhibit No. 2, sir, and would you tell me what that is?

A. The same as the first, Morrison-Knudsen check, or reasonable facsimile of.

Q. Who is it made payable to?

A. James C. Woods.

Q. Number of the check? A. No. 9012.

Q. Would you look at the reverse side of the check, sir. Does any writing appear there?

A. Yes, James C. Woods.

Q. And did you sign that James C. Woods?

A. I did.

Q. Did you negotiate that check?

A. I did.

Q. And where did you negotiate it?

A. Davis Liquor Store.

Mr. Plummer: I call the attention of the court and jury that that is the number of the check mentioned in Count 13 of the indictment.

The Court: 13? [51]

Mr. Plummer: Yes, sir.

The Court: Thank you.

Q. (By Mr. Plummer): Would you look at the object which I have given you which has been marked for identification as Plaintiff's Exhibit No. 3 and tell me what it is, sir?

(Testimony of Dewey Taylor.)

The Court: May I see those as you complete them, please. The first two. Thank you.

A. This is a Morrison-Knudsen check, or reasonable facsimile of.

Q. And would you tell me what number stands on there. A. 8973.

Q. Will you give me that number again?

A. Number 8973.

Q. And who is it made payable to?

A. James C. Woods.

Q. And would you inspect the reverse side of the draft, sir. Do you see a writing on there?

A. Yes, I do.

Q. And what is the writing?

A. James C. Woods.

Q. And did you write that James C. Woods?

A. I did.

Q. And did you negotiate that check?

A. I did.

Q. And whereabouts? [52]

A. Radio-TV Center and Record Shop.

Mr. Plummer: I call the attention of the court and jury that check 8973 is mentioned in Count 14 of the indictment.

The Court: Thank you.

Q. Will you take that which has been marked for identification as Plaintiff's Exhibit No. 4, sir, and tell me what it is, if you know?

A. It is the same as the others, Morrison-Knudsen check, or reasonable facsimile of.

Q. And what number, serial number?

(Testimony of Dewey Taylor.)

A. No. 8977.

Q. The payee, if any?

A. James C. Woods.

Q. Will you look at the reverse side of the check, sir. Is there a writing on there?

A. Yes, there is.

Q. What is written on there?

A. James C. Woods.

Q. And did you write that or do you know who wrote that James C. Woods? A. I wrote it.

Q. And did you negotiate that check?

A. Yes, I did.

Q. And where did you negotiate it, if you know?

A. I am trying to see. Oh, it's City Service. [53]

Q. All right, sir. Would you look at the document which has been identified for——

The Court: Could you help us then, which count that might be?

Mr. Plummer: Yes, I am sorry, your Honor. 8977 is mentioned in Count 15 of the indictment.

The Court: Thank you.

Q. (By Mr. Plummer): Would you look at the object which has been marked for identification as Plaintiff's Exhibit No. 5 and would you tell us what that is, sir?

A. It is a Morrison-Knudsen check or reasonable facsimile of.

Q. And is there a serial number on the check?

A. No. 9065.

Q. And who is it made payable to?

A. James C. Woods.

(Testimony of Dewey Taylor.)

Q. And would you look at the reverse side of the check, sir. Do you see a writing there?

A. Yes, sir, I do.

Q. Do you know who made that writing?

A. I did.

Q. And who did—— A. James C. Woods.

Q. And did you sign the name James C. Woods?

A. I did. [54]

Q. And did you negotiate that check?

A. I did.

Q. And whereabouts, sir?

A. At Leonard's Varieties.

Mr. Plummer: I call to the attention of the court and jury that that is the check mentioned in Count 16 of the indictment.

The Court: Thank you.

Q. Would you look at the object which has been handed you, sir, and marked for identification as Plaintiff's Exhibit No. 6. Will you tell us what it is?

A. It is a Morrison-Knudsen check, or reasonable facsimile of the same.

Q. And would you give us the number of it?

A. Check No. 9051.

Q. And who is the payee, sir?

A. James C. Woods.

Q. Now, would you look at the reverse side of the check, sir. Is there any writing on the reverse side of the check? A. Yes, there is.

Q. And does the name James C. Woods appear there? A. It does.

(Testimony of Dewey Taylor.)

Q. And did you sign that or do you know who signed James C. Woods? A. I signed it.

Q. Did you negotiate that check?

A. I did. [55]

Q. Would you tell us where?

A. Stewart's Photo Shop.

Q. Thank you, sir. Now, will you look at what has been marked for identification only as Plaintiff's Exhibit No. 7. Tell us what it appears to be or what it is?

A. A Morrison-Knudsen check or reasonable facsimile of the same.

Mr. Plummer: Did I, your Honor, tell—

The Court: No.

Mr. Plummer: I am sorry. The last check, 9051, is the check mentioned in Count 17 of the indictment.

The Court: Thank you.

Q. Now, Mr. Taylor, would you tell us if this check that you know of, which has been marked for identification as Plaintiff's Exhibit No. 7, has a serial number on it? A. It does.

Q. Will you tell us what that is?

A. It is not audible.

Q. Pardon me? A. It is not audible.

Q. Not—

The Court: Readable?

A. Yes. I mean I can't—

Q. I wonder if you would read the figures that you are able to read, possibly the first, second and the third one is the one?

(Testimony of Dewey Taylor.)

A. Number 90 blank 6. [56]

Q. Unintelligible 6? A. Unintelligible 6.

Q. Who is it made payable to?

A. James C. Woods.

Q. Now, would you look at the reverse side of that check, sir. Is there writing on there?

A. Yes, there is.

Q. And what is the writing?

A. James C. Woods.

Q. And do you know who signed James C. Woods? A. I did.

Q. And did you negotiate that check, sir?

A. I did.

Q. And could you tell us where you negotiated it? A. Anchorage Liquor Store.

Mr. Plummer: I will advise the court and jury and counsel that this is the check that is mentioned in Count 18 of the indictment.

The Court: Thank you.

Q. Now, at the time you negotiated these checks in the name of James C. Woods you knew or did you know that the checks were false and fictitious?

A. Yes, I did.

Q. Now, Mr. Taylor, you have seven checks there. You have remembered the place that you cashed each of them except the [57] one marked Plaintiff's Exhibit No. 1 A. That is right.

Q. Upon further reflection do you now recall where that was cashed? A. Frontier Loan.

Q. At the Frontier Loan Company?

A. That is right.

(Testimony of Dewey Taylor.)

Q. And for the sake of the Court and jury can you tell us how come or when you first realized that that was true? A. Just now.

Q. Now, were you arraigned down in Commissioner's Court——

Mr. Hepp: I object to the suggestive manner in which the counsel is leading this witness through his answers. I think it should be a direct question. He said he didn't know, I believe he said. Now counsel suggests it might have been when he was arraigned.

Mr. Plummer: I asked him was he arraigned down in Commissioner's Court. There is nothing suggestive about that. I could ask that same thing of every defendant sitting here in the court room.

The Court: Well, of course, the Court will sustain the objection to a leading question and/or suggestive question, but this does not appear to be, therefore, the objection is overruled. You may proceed. [58]

Q. (By Mr. Plummer): Were you arraigned down in Commissioner's Court? A. I was.

Q. Were you eventually released on bond, sir?

A. I was.

Q. And do you know who put up your bond?

Mr. Hepp: I object to that. I don't see that that is relevant and pertinent to the issues before this Court.

The Court: What is the materiality, counsel?

Mr. Plummer: I was going to show——

Mr. Hepp: We believe any——

Mr. Plummer: Might we approach the bench?

(Testimony of Dewey Taylor.)

The Court: Yes.

(Whereupon, all counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

Mr. Plummer: I was going to show, as is obvious from the check, that there is no banking place and to refresh the witness' recollection. As a matter of fact, the first time he became aware that this was the particular check cashed down at the Frontier Loan Company was when he was released on bond. A fellow by the name of Waters came up and made bond for him and Mr. Waters, of course, runs the Frontier Loan Company, and, of course, when he saw the party making bond he had seen him. I don't know who arranged the bond, perhaps Mr. Kay or Mr. Gore, somebody who is representing him in his behalf at that time did it, but it is not [59] greatly material. I don't think it is harmful in any way. I don't see how the defendants or any of them could be prejudiced by bringing that out.

Mr. Nesbett: Why he remembered it at a later time where he negotiated that one check. You don't intend to follow it as a precedent with respect to every defendant as to who made bond?

Mr. Plummer: No. We have 67 checks. The first time through he didn't remember and the second time through he did remember.

Mr. Hepp: I am willing to stipulate for the defendant Wright that the witness can answer that

(Testimony of Dewey Taylor.)

summarily that he has now remembered where he cashed that and leave the bonding issue out.

The Court: Very well.

(Whereupon, all counsel resumed their respective seats and the following proceedings were had in the presence of the court and jury:)

The Court: I understood based upon the prior stipulation where one counsel entered into a stipulation that all other counsel likewise entered into the same stipulation unless there is an exception.

Mr. Hepp: That is satisfactory with me unless there is an exception. I think each counsel has a right to lodge an objection.

Mr. Kay: I didn't hear the particular objection. [60]

The Court: The point is simply this, if you recall Attorney Hepp entered into a stipulation. Now, there is no comment by Mr. Nesbett or yourself and I would conclude, based upon our prior agreement, that since you didn't take any exception to his proposed stipulation that you concur therein.

Mr. Hepp: I will inform Mr. Kay.

Mr. Kay: I didn't hear the stipulation, your Honor, because I wasn't particularly concerned with the question. I will ask Mr. Hepp what the stipulation was.

The Court: You may do so.

Mr. Nesbett: As to this stipulation, your Honor, I agree I would be bound by it.

(Testimony of Dewey Taylor.)

The Court: Well, counsel, I think that is no more than fair——

Mr. Kay: I have no objection.

The Court (Continuing): ——to require of you the same courtesy you are asking of the Court.

Mr. Kay: I most certainly will.

The Court: Mr. Nesbett, I would like to have it understood now that if one of counsel offer or propose to stipulation that unless you take exception that it will be assumed that you have no exception to the stipulation.

Mr. Kay: Right.

The Court: The same as you want an objection even though you don't take an objection. [61]

Mr. Nesbett: Very well.

The Court: Very well. You may proceed.

Mr. Plummer: Would the Court now tell the jury what the stipulation was.

The Court: As I recall the stipulation was to the effect that—I have forgotten just who the party was to be honest with you. Counsel stated—I wasn't concerned who the party was but I was as to the question of law leading up to that point. Mr. Hepp, would you please proceed.

Mr. Hepp: My statement would be that the substance of the stipulation is that this witness may state that he now recalls where he negotiated the particular identification, I have forgotten its number.

Mr. Plummer: Number 1.

(Testimony of Dewey Taylor.)

The Court: But who was it? That was the thing I didn't get.

Mr. Hepp: Sir?

The Court: He now recalls why he negotiated it, but where did he negotiate it?

Mr. Hepp: He may state that now. That was the stipulation.

The Court: I see. Thank you. You may proceed.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may do so. [62]

Q. (By Mr. Plummer): Would you now tell us again where you negotiated Plaintiff's Exhibit No. 1?

A. I don't see how I forgot it in the first place because ironically they went my bond, Frontier Loan.

Q. Would you just tell us——

A. Frontier Loan.

Q. (Continuing): ——where you did it?

A. Frontier Loan.

Mr. Plummer: I now offer Plaintiff's Exhibits for identification only 1, 2, 3, 4, 5, 6 and 7 in evidence.

The Court: Is there any objection?

Mr. Kay: I simply enter the objection there has been no foundation laid yet as to whether or not these checks are genuine Morrison-Knudsen checks or, as the witness so often said, reasonable facsimile of.

The Court: I think you are entitled to know

(Testimony of Dewey Taylor.)

that. Mr. Plummer, would you inquire of this witness.

Mr. Plummer: I inquired of this witness and I am sure the record will bear me out.

The Court: I know, but will you just ask specifically, are these Morrison-Knudsen checks.

Q. (By Mr. Plummer): Are these actually true and genuine Morrison-Knudsen checks?

Mr. Kay: Object to that. This witness couldn't possibly know. [63]

The Court: Well, if he knows he may answer. Objection overruled.

Mr. Kay: How could he know?

The Court: I don't know. Anybody can testify as to what they know.

Mr. Nesbett: Your Honor, I'd like to join in that objection. I don't think he is competent to answer. No foundation has been laid to know whether or not they were Morrison-Knudsen checks, therefore, the witness might make a damaging conclusion based upon ignorance or a desire to assist the United States Attorney and I object at this time.

Mr. Plummer: I object to the last remark and ask that the jury be instructed to disregard it.

The Court: Let's take one point at a time. Now, Mr. Kay objected to the admissibility of these documents because there was nothing in the record as to whether or not these were genuine Morrison-Knudsen checks. In accordance with his request I asked counsel for the Government to ask this witness whether or not he knew and now counsel come along

(Testimony of Dewey Taylor.)

and object to the very thing that they have requested. Objection overruled. You may answer if you know. If you know, now don't guess.

Mr. Nesbett: May I be heard on my objection?

The Court: You have already been heard, counsel. Do you have something to add?

Mr. Nesbett: It isn't necessarily required, your Honor, [64] that Mr. Plummer qualify these identification exhibits for admission into evidence by this witness. The point we are making is that he hasn't supplied all the information concerning them that would make them admissible. To try and get it out of this witness when he is not competent to answer the question would be forcing the witness to possibly say something that he would not otherwise say.

Mr. Plummer: I will be glad to rely on the record, your Honor. If you recall, after the last No. 7 was marked for identification and he said he had negotiated all of them I asked the witness if he knew at the time he negotiated the documents, the seven items, if they were false and forged and he said yes.

The Court: Yes.

Mr. Plummer: That is all the foundation needed.

Mr. Hepp: May it please the court, knowing they are false and forged certainly doesn't equip this witness with the knowledge as to whether they were genuine M-K checks. I see no relation.

The Court: The point of it though is that counsel is the one that made the objection.

(Testimony of Dewey Taylor.)

Mr. Hepp: I would like to join in the objection myself, as no foundation has been laid, calls for a mere opinion of this witness, and I fail to see his qualification.

Mr. Nesbett: Only so far, your Honor, is the signature [65] of James C. Woods is what I thought Mr. Plummer had in mind. He could, of course, testify to that.

The Court: But let's go back now. Mr. Kay was the one that requested that the court grant him an objection to the admissibility of these documents because they had not proven to be this, that or the other.

Mr. Kay: That is right, your Honor. What I am saying is this witness is qualified to testify as to his signature on them, but as to that other question he is not qualified and he has already testified where he got them.

The Court: Well——

Mr. Plummer: He is qualified to testify——

The Court: Pardon me. The only thing before the Court is admissibility or inadmissibility of these exhibits. Based upon the record and evidence before the Court the objection is overruled and they may be admitted and marked Plaintiff's Exhibits 1 through 7, inclusive.

Mr. Plummer: May I have just a minute, your Honor?

The Court: You may.

Mr. Plummer: I have no further questions, your Honor.

The Court: Now, could we have an understanding of what will be the order of cross-examination, counsel?

Mr. Hepp: I intend to examine the witness for defendant Raymond Wright.

The Court: First? That is the point. [66]

Mr. Hepp: I am willing to proceed first.

The Court: Well, supposing you discuss it with other counsel so you might have an understanding and meeting of the minds. I haven't any preference myself.

Mr. Kay: It doesn't make any difference. If the Court cares to take a recess we could discuss it during the recess.

The Court: Would you care to do so? Is that your pleasure?

Mr. Hepp: Yes, your Honor.

The Court: Very well. Court will go into recess for a period of 10 minutes.

(Whereupon, at 11:15 o'clock a.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. The bailiff has called to my attention the fact that one of the witnesses was in the court room this morning. Now, as I told counsel before, I do not know the names of the witnesses myself, therefore, I will have to look to counsel to see that the witnesses are excluded, under the rule. May I inquire again of counsel, of anybody present whether or not there are any wit-

nesses who have been subpoenaed or who have come to testify in this trial?

Mr. Plummer: Are there any witness here that have been subpoenaed by the Government? [67]

The Court: What is that gentleman's name, Mr. Plummer?

Mr. Plummer: Can you give me your name?

Mr. Judd: Clifford Judd.

The Court: Clifford Judd.

Mr. Kay: I note that that man—I didn't know that he was a witness—has been in the court room all the preceding hour.

Mr. Plummer: I didn't know the gentleman and I don't know him. I have seen him but I didn't recognize him as being a witness.

The Court: There was also a colored person, so the bailiff told me, and I don't know who he is, nor what his name is, but he left prior hereto. Well, as you can see, counsel——

Mr. Kay: None of the witnesses I am going to call have been here. I know because I have watched for them, but I can't watch for the Government witnesses because I don't know who they are.

The Court: I appreciate that, but we will have to be cautious and careful. As I said, I don't know either the defense witnesses nor the Government witnesses. I will have to look to counsel for that assistance.

Mr. Plummer: If the Court will bear with me when we start at each hour I will inquire to make sure.

The Court: Very well. You may proceed then.

DEWEY TAYLOR

testifies as follows on

Cross-Examination

By Mr. Hepp:

Q. How old are you, Mr. Taylor?

The Court: Excuse me. You were going to advise the Court how you were going to cross-examine so we will have some order to our proceedings. I take it you are going to be first, Mr. Hepp.

Mr. Hepp: Yes.

The Court: And who is next?

Mr. Kay: I have not yet decided whether or not to cross-examine this witness at all.

The Court: But any witness so we will have some routine.

Mr. Kay: It may be that the next witness I will want to cross-examine him first. I don't see any difference as long as we don't delay the trial, as long as we proceed expeditiously. We may want to vary from witness to witness.

The Court: I haven't any objection to that excepting this, I have had a number of trials where we had lots of counsel and we have always entered into some kind of agreement. Now, we can always vary that to meet the wishes of counsel.

Mr. Hepp: I submit to the Court that in many joint trials the defense have interests in common. In this particular trial there may be very antagonistic interests and I certainly want to be regarded as independent of the other counsel. I am sure [69] this must be puzzling to the jury because we neces-

(Testimony of Dewey Taylor.)

sarily must confer about certain matters because there are some things that are common to all parties, but we desire to remain singularly, at least I do.

The Court: Of course, you can remain singularly and still have some pattern.

Mr. Hepp: If we can agree.

The Court: If you can't we can do the next best, but I'd like to have an understanding generally with leave of counsel to appeal to the Court to the change, if you haven't any objection.

Mr. Hepp: My view would be that the witness who may appear more in point of one witness than the other, certainly, would entitle the attorney for that defendant to voice an opinion if he so desires of an opportunity of first examination.

The Court: I concede that but generally——

Mr. Hepp: Vary witness to witness accordingly.

The Court: But I still feel I am not asking anything unusual or out of the ordinary to have an understanding with counsel as to which is to go first.

Mr. Kay: Any order is agreeable with the understanding it can be varied.

The Court: Mr. Hepp first. Who is next?

Mr. Kay: I will go second.

The Court: All right. Mr. Kay then Mr. Nesbett. You may proceed then. [70]

Q. (By Mr. Hepp): I believe I asked you, sir, how old you were? A. I am 37 years old.

Q. Are you married? A. No, not now.

Q. Have you been married? A. I have.

Q. Have you raised a family? A. I have.

(Testimony of Dewey Taylor.)

Q. Where have you spent the principal portion of your life?

A. Musician, entertainer. I have traveled all over the world. I have traveled since I was old enough. No certain place.

Q. How long have you been in the Territory of Alaska?

A. Since the latter part of—first part of '55.

Q. Where has that residence been? Has that been throughout the Territory or—

A. Fairbanks—Anchorage and Fairbanks.

Q. Could you give us some idea of the break in time during your period of stay up here, the time you spent in Anchorage and in Fairbanks?

A. When I first came to Alaska I was here about three weeks then I went to Fairbanks and I stayed for about a year and nine months, pretty close to two years.

Q. And that would bring you up to what date, sir?

A. Up until the time I left to go Outside. [71]

Q. And what was that date again?

A. That was September 4.

Q. That would be immediately following this incident that you have been referring to?

A. That is right.

Q. I believe you stated that you knew the defendant Raymond Wright? A. I do.

Q. How long have you known Mr. Wright?

A. I have known Mr. Wright ever since he first came back to Anchorage in September.

(Testimony of Dewey Taylor.)

Q. Has that been a social or a business acquaintance or both?

A. He was once my employer.

Q. You were working in the capacity as musician?

A. I worked in the capacity of bartender and musician for him.

Q. And would you state again how long that employment was?

A. Up until I left—when I first met him in September of '55 until September of '56, a year approximately.

Q. Could I conclude that you got along pretty good with Mr. Wright, being his employee all that time? A. I did.

Q. In fact, socially you were quite good friends, weren't you? A. We had our ups and downs.

Q. As many people do?

A. That is right. [72]

Q. Nothing particularly unusual about that with your acquaintances with other people and friendships, is that right? A. That is right.

Q. I believe you stated that you had pleaded guilty to a charge here in this Court.

Mr. Plummer: It is immaterial on this point, but I think the question as phrased is improper. The question asked on cross-examination should be "did you testify, did you say this or that." It should be a question and not, of course, an affirmative—

The Court: Objection sustained.

Q. (By Mr. Hepp): Did you testify here that

(Testimony of Dewey Taylor.)

you pleaded guilty? A. I did.

Q. And that was to the counts contained in the indictment as is before this Court at this point?

A. I did.

Q. Have you been sentenced for that on that plea? A. No, I haven't.

Q. In the course of this matter and following your arrest and—incidentally, may I ask when you were arrested in connection with the indictment that is presently before the court?

A. I was first apprehended in Vancouver, B. C., British Columbia, and I was brought back to Seattle and brought up here. I got up here February 25, so this must have been around the 19th or 20th of February. [73]

Q. And you were in custody here in Anchorage, were you, following that arrest? A. I was.

Q. In fact——

The Court: Pardon me. I am confused, counsel. It is only the 20th day of February now. What year is that?

The Witness: Last year.

Mr. Hepp: I thought that he was referring to last year, a year ago.

Q. If you would be good enough to state, sir, from the witness stand what year it was?

The Court: You see, that wouldn't add up. If I am not mistaken these checks were just passed last August.

Mr. Kay: '56.

(Testimony of Dewey Taylor.)

Mr. Plummer: The checks were passed over the Labor Day holiday in 1956, your Honor.

The Court: Oh, in '56. I stand corrected. Thank you.

Q. (By Mr. Hepp): What year is this February date that you have given us? A. 1957.

Q. In the course of during your custody, constructive or otherwise, by that I mean either out or in without bail, you engaged an attorney to represent you in this matter, did you not?

A. No, I did not. [74]

Q. Did you ever engage Mr. Wendell Kay to represent you? A. No, I did not.

Q. Did you ever have any discussions with Mr. Kay in connection with your problems and difficulties arising out of this arrest on this indictment?

A. At first I did.

Q. Well, did you go to him and talk to him in his capacity as an attorney or was it for some other reason? A. I didn't talk——

Mr. Plummer: Object to the question as being immaterial.

Mr. Hepp: I believe he stated he hadn't engaged an attorney but that he talked with one. I was trying to determine the difference.

Mr. Plummer: I think both questions are immaterial.

The Court: Objection overruled. He may answer the question.

A. I went and got in touch with Mr. Kay. I was

(Testimony of Dewey Taylor.)

talking with Mr. Kay. I never engaged him as an attorney because I never had the money.

Q. Well, did you consider him as your counsel at least until the fact developed that you desired not to pay him some money, or whatever this reason is that you started to say?

A. We never talked along those lines.

Q. Along what lines?

A. Along the lines of him being my attorney and I his client. [75]

Q. Well now, isn't it a fact that sometime considerably later you again approached Mr. Kay and said, "I don't need your services any more. I have made a deal with the D.A."?

A. I did not.

Q. You deny making that statement to him?

A. I deny making that statement. I said I didn't need an attorney. I had already pleaded guilty.

Q. Have you made a deal with the District Attorney?

A. No, I have not.

Q. Have you discussed with him your answers and questions, the questions that are going to be put to you in this trial?

A. How do you mean have I discussed it with him?

Q. Just what the word means. Have you discussed with the District Attorney or any of his staff the questions and answers that were going to be brought out in this trial?

A. All I have discussed with the District Attorney as far as this trial is my statement.

Q. That is all?

A. That is all.

(Testimony of Dewey Taylor.)

Q. Let's see, Mr. Taylor—

A. That is the statement I signed.

Q. How many statements have you signed since you have been arrested? A. One.

Q. When did you sign that? [76]

A. I signed that in front of Commissioner Daines, United States Commisisoner Daines.

Q. When? A. Last year.

Q. Where is Commissioner Daines? I mean, where, geographical location?

A. U. S. Commissioner's office in the Federal Building.

Q. Here in Anchorage?

A. In Anchorage.

Q. And all you have discussed was this statement with the District Attorney?

A. That is all.

Q. Mr. Taylor, where were you from approximately 8:00 o'clock until after 11:00 o'clock last night? A. Where was I?

Q. Yes, where were you?

A. Do I have to answer that?

The Court: Well, you do.

A. Well, I refuse to answer that.

Q. On what grounds? That it may incriminate you? A. That is right.

Q. I fail to see any incrimination as to stating where you were unless you were committing a crime.

A. Well, I refuse to answer that.

Q. I insist that you answer it, sir. [77]

A. Do I have to answer that?

(Testimony of Dewey Taylor.)

The Court: If it would in some way incriminate you then, of course, you need not answer the question, but if it does not then you must answer it, yes.

Mr. Plummer: May I advise Mr. Taylor that he has no basis at all for refusing to answer that question. He should tell them where he was.

A. I was in jail under protective custody.

Q. (By Mr. Hepp): Were you in the usual place in jail where you have been or were you in a special place under protective custody last night between 8:00 and 11:00?

A. Between 8:00 and 11:00?

Q. Or thereabouts, yes, or any time during last evening? Mr. Taylor, will you state yes or no were you in the District Attorney's office, the United States Attorney's office last night after trial?

A. Yes, I was.

Q. And were you not there the night before until approximately 11:00 o'clock or later?

A. Yes, I was.

Q. And you spent these two nights discussing the statement that you had made and nothing else?

A. That is right.

Q. How long is that statement? [78]

A. Don't you have a copy?

Q. I asked you a question, sir.

A. Well, if you have a copy you should know.

Q. Just answer the question, please.

A. I have.

Q. How long is it, two, three, four, five pages, one half of a page?

(Testimony of Dewey Taylor.)

A. Oh—could I have a copy of it?

Q. I object. Just answer the question. I am asking you how long it is? You made it out. You ought to know.

A. I didn't count the pages.

Q. Would you give us an estimate, please? More than three pages?

A. Yes, it is.

Q. More than four?

A. I think so.

Q. Would you state whether or not in this statement that you made this year ago, I believe that is when it was, or more, did you mention the defendant Raymond Wright's name in that?

A. Yes, I did.

Q. In the same sense that you discussed it in your testimony yesterday, sir?

A. The same, except for one part.

Q. You know, of course, that it is within my power to obtain a copy of that statement? [79]

A. I have no objection. I said excepting for one part.

Q. You mean that part that Mr. Wright didn't know what was going on?

A. No, the part where Mr. Wright threatened my life.

Q. Well, I had understood that just occurred here the last few days?

A. That is right. That is in my statement.

Q. That is in your statement?

A. No, it is not in my statement, but it should be. I added it yesterday.

Q. How could it be if you made it a year ago?

A. I added it yesterday.

(Testimony of Dewey Taylor.)

Q. Have you ever been in trouble before, Mr. Taylor? A. No, I haven't.

Q. But you regard yourself in serious trouble now? A. I think so.

Q. Where did you first learn the word, phrase "reasonable facsimile?" What does that mean, incidentally?

A. Do I have to answer that?

A. Yes, you do.

A. Well, I have heard it used.

Q. By the District Attorney or one of his staff?

A. No.

Q. Before?

A. I have had a little education myself. [80]

Q. Well then, just tell us what it means?

A. It means it is either the same or something very close to it.

Q. That sounds right. Where did you first run into the phrase, "false and forged?"

A. On my warrant for arrest.

Q. What does the word "forgery" mean, sir?

A. I imagine it means signing a name that isn't yours or signing a check or something that is not yours, or that you have no legal right to sign.

Q. When you say something is forged, then you are just saying, according to your definition, that is something you have signed or somebody signed that they shouldn't have?

A. It means signing someone else's name, doesn't it?

Q. Well, without their permission?

(Testimony of Dewey Taylor.)

A. That is right.

Mr. Plummer: I am going to object to further inquiry along this line. I don't think it adds to anything and I don't think that the witness should be required to give a legal definition or——

Mr. Hepp: He is presumed to answer the question. We have a right to know and the jury has a right to know what he means by his statement. He used the word. I think he should be able to define it.

Mr. Plummer: He has answered the question. I object to further pursuing the matter. [81]

The Court: There is nothing before the Court in fact at this time since a further question hasn't been asked, therefore, let's proceed.

Q. (By Mr. Hepp): What was the name that you signed to these checks?

A. James C. Woods.

Q. Do you know a James C. Woods?

A. No, I don't.

Q. Well, if it were to be developed here that forgery is actually the writing of some other person's name without his permission, well then, how can you say you forged these checks if there is no James Woods?

Mr. Plummer: I object to that question as calling for a legal conclusion.

The Court: Objection sustained.

Q. (By Mr. Hepp): You stated that you hadn't made a deal with the District Attorney?

A. I did.

Mr. Plummer: I object to further questions

(Testimony of Dewey Taylor.)

along that line on the ground it is repetitious. It has been asked and answered twice. I am going to object.

The Court: I assumed it was a preliminary question. The objection will be overruled with that understanding. [82]

Q. (By Mr. Hepp): Am I to gather then that no promises have been made to you in connection with this then in exchange for your testimony?

A. They have not.

Q. Just only hope that it will be recognized?

A. That is correct.

Q. You are well acquainted with the considerations that are sometimes given in exchange for testimony, are you? You do have hopes in this case?

A. I do have hopes, yes, but I am not acquainted with anything. I have never been in anything before. I am not a habitual criminal.

Q. Well, I hope there was nothing in any of my questions that inferred that you were.

A. You talked as if I was used to this procedure.

Q. I did? What did I say in that regard?

A. I don't know. You know what you said.

Q. Actually, Mr. Taylor, you would be real happy to trade a year or two of your life for a year or two of one of these defendants——

Mr. Plummer: Object to these questions.

The Court: Objection sustained.

Q. (By Mr. Hepp): Isn't it a fact, Mr. Taylor,

(Testimony of Dewey Taylor.)

that you were on real good friendly terms with the defendant Wright until this altercation, this fracas, this incident that occurred out [83] at the Oasis when you became gravely embittered against him and went right down to the District Attorney's office and made a statement that was completely contrary to everything that you had said before?

A. That is an untruth.

Q. I believe you stated that following that incident that you did go right down and ask for custody, is that right?

A. No, I didn't state that.

Q. Well, did you in fact go down to the District Attorney's office or one of his staff or other law officer?

A. No, I called the Marshal.

Q. And you and Mr. Wright parted company right that moment?

A. Me and Mr. Wright—Mr. Wright and I were never in company.

Q. Oh. You stated that for over a year you worked for him and you were on very good terms?

A. You didn't say that. You were saying one thing and you jump from one week back to last year, a year or so ago. I mean, if you make it definite I will do my best to give you an answer.

Q. When did you part this friendly relationship with Mr. Wright then that you testified did exist during the period of your employment, with your ups and downs, of course?

A. Well, after I layed in jail 79 days.

Q. You got mad at him for that?

(Testimony of Dewey Taylor.)

A. No. [84]

Q. Then that isn't when you parted company?

A. I parted company with everybody when I layed in jail for 79 days.

Q. You were imbittered against the world, you mean?

A. I didn't say anything against the world.

Q. You said you parted company with everybody. What did you mean by that?

A. After laying in jail for 79 days I didn't have any special love for anybody in or out of the world.

Q. I will ask you one more time, Mr. Taylor, and you are under oath. Do you deny having told Mr. Wendell Kay, in substance, "I don't need your services any more. I have made a deal with the District Attorney." Do you deny that?

A. I deny that, part of it.

Q. What part?

A. I told him I didn't need his services as an attorney as I had already pleaded guilty.

Q. When did you plead guilty?

A. I pleaded guilty last year.

Q. And it was after you had pleaded guilty that you told him this or before, Mr. Kay?

A. I couldn't have told him before because I was in jail.

Q. I believe he has occasion to go over to the jail and talk with people.

A. I never had occasion to talk to Mr. Kay when I was in jail. [85]

(Testimony of Dewey Taylor.)

Q. Do you remember when you told him, whether you were in or out of jail?

A. I was out of jail.

Q. That was after you had pleaded guilty?

A. It was.

Q. Well, would you state to me just when you did plead guilty? A. When I signed——

Mr. Plummer: If he knows.

Mr. Hepp: I am confused. I really am confused.

Mr. Plummer: May I approach the witness and give the witness the court file so he can check the date?

Mr. Hepp: I withdraw the question and ask for an approximation, whether it was spring, fall, or the winter months of a given year. He certainly could remember that, I believe, or state whether he can or not.

A. It was the fall of the year.

Q. Of what year? A. This year.

Q. Fall of this year? A. Yes.

Q. You must mean 1957. The fall of this year hasn't occurred yet.

A. Wait a minute. I couldn't plead—I had to plead guilty before a judge. That was this year, fall of this year. [86]

Q. Do you mean, if I may suggest, the fall of 1957, the fall that has just passed?

A. This fall.

Q. Well, this fall, sir—this is 1958 and fall doesn't occur until next August.

A. This past fall.

(Testimony of Dewey Taylor.)

Q. That would be 1957?

A. '57, yes, that is right.

Q. I was going to say I wish somebody would explain it to me. I can't quite follow. It would be 1957?

A. That is right.

Q. That was a year after the incident occurred, is that right, after the acts which took place that you have testified to in connection with this?

A. Yes.

Q. About a year?

A. Yes. I had the two confused, the signing of my statement and when I pleaded guilty. I had the two confused. That is what I was referring to when I said I had pleaded guilty before. When I signed my statement, that is when I thought I had pleaded guilty, but I didn't plead guilty until I went before the judge.

Q. And that was last fall?

A. That is right.

Q. Was that before or after you told Mr. Kay in connection with [87] what we have discussed?

A. That was before I told him that.

Q. You mean you pleaded guilty, then went out on the streets after that?

A. I have been out on the street ever since I pleaded guilty.

Q. You have never been sentenced and you have had a guilty plea in this court for some six months or five months?

A. No.

Mr. Plummer: Object to the question.

Mr. Hepp: I am trying to understand this.

(Testimony of Dewey Taylor.)

Mr. Plummer: If you want to understand it look at the court file. You will find all the facts, date of plea in there, whether or not he has been sentenced in the court file.

Mr. Hepp: We have relied on this witness' memory on everything else; I think we ought to be entitled to rely on it now. If he can't remember this how can he answer anything else?

Mr. Plummer: He answered the question.

Mr. Hepp: Then what are you objecting to?

Mr. Plummer: To the inference you are attempting to draw.

Mr. Hepp: I am not aware of that.

The Court: Let's not have any repartee. Let's proceed.

Mr. Plummer: I am sorry.

Mr. Hepp: I am sorry. May I have a moment, your Honor?

The Court: Yes, you may. To keep the record straight, [88] do counsel feel that the Court should rule on this repartee? I got lost in it.

Mr. Hepp: I will withdraw any objection. I am not sure what the point was.

Mr. Plummer: I will certainly withdraw anything I had and I will apologize to counsel and to the Court.

The Court: Thank you.

Mr. Hepp: At this time, your Honor, I would like to formally make a demand upon the United States Attorney to produce the statement or a copy of it.

(Testimony of Dewey Taylor.)

The Court: Very well. Motion is granted. You may hand the statement to counsel.

Mr. Hepp: May we have a few moments to examine it?

The Court: Why don't we do this, counsel: We could recess at this time.

Mr. Plummer: I would request, your Honor, that the inspection be made in the presence of one of the Court's officers, then returned to the Court's officer, one of the Court's officers, that is, I have no objection whatsoever to giving them the statement and have it ready to give to them at this time, but if an inspection is made I want the bailiff or somebody to be here.

Mr. Hepp: I rather resent the inference there. I believe myself to be an officer and attache of this Court and can be entrusted for the safe keeping and return of an instrument.

Mr. Plummer: I renew my request, your Honor, and I—— [89]

Mr. Hepp: I add to my request, all the statements that have been made by this witness to the District Attorney or any of his staff.

The Court: Very well.

Mr. Hepp: Or in the Marshal's office or kindred offices under his control.

The Court: Mr. Plummer, at this time then the Court directs you to hand over to Mr. Hepp the statements and all the statements made by this witness to you and/or anybody in your office.

Mr. Plummer: This does not include the work

(Testimony of Dewey Taylor.)

preparation of the United States Attorney for the trial.

The Court: Yes. Well, there has been no demand for that.

Mr. Plummer: May I approach the witness and give him a copy of the statement if there is going to be interrogation?

Mr. Hepp: I don't believe that is covered within the scope of the rule that allows a counsel to be assisted or not in statements that are made previously.

The Court: On the other hand though—

Mr. Hepp: I am quite sure I can site the authority.

The Court: Under the rule, counsel, if this witness is to be examined about a statement that he has made and signed he is entitled to see it before the examination.

Mr. Hepp: I believe that is right, your Honor, but I [90] haven't made any examination concerning this statement and I believe that the objection is, therefore, premature.

The Court: Then if you do examine this witness it is understood that a copy of this will be accorded to him and he will have a chance to read it before we proceed.

Mr. Plummer: That is all I wanted.

The Court: That will be the order.

Mr. Hepp: We would like a few moments.

The Court: Do you want to recess at this time?

Mr. Hepp: It is very nearly noon, your Honor.

The Court: I think probably the ends of justice would best be served through this proceeding. Now, getting back to this other request. I am in the unfortunate position, since counsel for the Government has requested that this be considered in the presence of someone, I suppose I am bound by that request the same as if the converse were true.

Mr. Hepp: May I state that if counsel values the original that if he will give me a copy with his oral certification that it is a true and correct copy I am willing to trust him in that regard.

The Court: Very well. That being the case then would you hand the original back to Mr. Plummer and he will supply you forthwith—I presume it is a signed copy, Mr. Plummer?

Mr. Plummer: This is an unsigned copy.

Mr. Hepp: I have no objection to the signature if he [91] will certify it is a true and correct copy of this original.

Mr. Plummer: As a matter of fact, your Honor, there may be corrections made on the original that are not made on the copy.

The Court: Could you ascertain that fact?

Mr. Plummer: I am sure there are. I did not mean that they had to be surveilled or anything like that. I certainly didn't mean to convey that impression except I didn't want them to take an hour or two in the office and hash it over there. If they are going to examine it they should examine it in the Clerk's office or some place like in the custody of the Court.

Mr. Kay: There isn't any such provision in the statute. The statute simply says the United States, when ordered by the judge, will hand it over. It doesn't say surveillance required by detectives or marshals or anybody else.

Mr. Plummer: It is contemplated in the statute the inspection will be made in the presence of the Court during the course of the trial prior to cross-examination and after the direct examination has been concluded.

The Court: I think that is right, Mr. Kay.

Mr. Kay: It simply says, "Whenever any statement is delivered to a defendant pursuant to this section, the Court in its discretion, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its [92] use in the trial." I am quoting from the statute.

The Court: I understand that. Now, may I see that, please?

Mr. Kay: Yes, sir.

Mr. Hepp: I might add it is not entirely clear to me why it would be objectionable whether I studied the statement here or out in the street or in my office.

The Court: If you will recall, counsel, there were a number of decisions on this matter prior to the time the law was passed.

Mr. Kay: The Jincks opinion, sir.

The Court: Yes. As I recall there were certain limitations in the Jincks opinion.

Mr. Kay: I don't remember any. I was one of the first to avail myself of it.

The Court: I am relying upon memory only and I could be in error.

Mr. Plummer: I have absolutely no objection then to their looking at it as long as they want to except I think it should be in the custody of the Court because it is on the Court's order that it go to them.

The Court: Well, of course, the Court would be responsible for that and I am not impugning, counsel, in any way, shape or form, but what could happen is that it could be surreptitiously withdrawn from counsel without counsel participating in any way, [93] shape or form. It would appear this would be similar to any other exhibit that may be offered in evidence and that is that it should be under the constructive custody all the time of the Clerk of the Court and I think this is no exception.

Mr. Kay: Of course, this is not an exhibit. It is a part of the material in the possession of the United States Attorney and merely offered to us for inspection to determine whether there is any use to be made of it at all, read it and toss it back.

Mr. Hepp: We don't believe it would be admissible on the application of either party.

The Court: I understand that, but getting back to my point and that is that all things of this nature are ordinarily considered to be under the custody of the in-court deputy.

Mr. Kay: As far as I am concerned, well, I am not concerned with it. I don't really care. I was

going to say I was concerned. I would sit here and read it.

Mr. Hepp: If Mr. Plummer would designate some court officer I will withdraw my objection and stay here and study it.

The Court: All right. Mr. Bailiff, then the Court instructs you to remain then and then take it back to Mr. Plummer. Give Mr. Hepp all the time he needs to consider the document.

Mr. Hepp: Thank you.

The Court: Very well. Then for the reasons stated, it is now—based upon our consumption of time for this [94] determination—seven minutes to 12:00. I think probably we best recess for our lunch at this time, therefore, without objection the trial of this case will be continued until this afternoon at the hour of 2:00 p.m.

Again I must instruct you, as you know, under the law you are not to discuss this case among yourselves nor are you permitted to let others discuss it with you.

This court will now go into recess until 1:30.

(Whereupon, at 11:55 o'clock a.m., the Court continued the cause to 2:00 o'clock p.m. of the same day.)

(At 2:00 o'clock p.m., all counsel being present, the trial of said cause was resumed:)

The Court: Will counsel stipulate all the jurors are back and present in the box?

Mr. Plummer: Yes, your Honor.

Mr. Kay: Yes, your Honor.

Mr. Hepp: We so stipulate.

The Court: Mr. Plummer.

Mr. Plummer: Your Honor, I would like to take the time of the Court to inquire if there are any witnesses under Government subpoena now in the courtroom? (No response.)

I then have another matter I'd like to take up with the Court. I was advised over the noon hour, in fact on the way over to my [95] office, that we have two statements from this witness. I just produced one statement to defense counsel prior to lunch time because I thought that was all we had. I have found out we have two and I would like at this time to give the other statement to defense counsel for their inspection.

The Court: Very well, and the court will remain in informal recess while counsel have an opportunity to read this. The jurors may visit and so may the people in the courtroom.

Mr. Plummer: May I take this opportunity to approach the witness and make available to him the copy, if in fact he is cross-examined?

Mr. Hepp: I object to that until there is some cross-examination.

The Court: Yes, I think counsel for the defense is correct.

Mr. Hepp: I believe Mr. Plummer missed the point. We are asking our right to—in preparing our case to inspect these. I don't think the matter goes any further or there is any inferences or implications than that. It is a normal procedure.

The Court: That is true.

(Following a short informal recess, the Court resumed formal session and the following proceedings were had:)

The Court: Mr. Hepp.

Mr. Hepp: We are ready to proceed. [96]

The Court: Very well.

DEWEY TAYLOR

resumes the witness stand and testifies as follows on

Cross-Examination (Continuing)

By Mr. Hepp:

Q. Mr. Taylor, you stated during your direct examination that you had a given amount of money. I fail to recall how much that was. I believe you testified the total amount of money that you had come by by virtue of your having cashed these checks. Can you now state what your testimony was?

Mr. Kay: I object to that question, your Honor. I renew the same objection that I made to it when the United States Attorney asked a similar question, that is, that the given amount of money obviously involved an attempt to prove other crimes other than those set forth in the indictment.

The Court: Objection overruled. He may answer that question. Now, I am not ruling upon your objection as to the fact we are not trying anything else but what is in the indictment, but I think it is

(Testimony of Dewey Taylor.)

proper cross-examination where counsel for the defense has inadvertently forgotten the amount so testified to.

Mr. Kay: I objected to it at the time.

The Court: Yes, and as I recall the objection was overruled.

Mr. Kay: No, the objection, your Honor—what I did, [97] I neglected to object at the time that question was asked, then I objected when he was asked another question a few minutes later and the objection was sustained.

Mr. Hepp: May it please the Court, I believe that the information is not too important if it offends Mr. Kay.

Mr. Kay: It offends me highly.

The Court: Very well. You may proceed, there is nothing before the Court.

Mr. Hepp: I had several other questions along that line. I will withdraw those. That ends my examination.

The Court: Now, Mr. Kay, you may examine.

Mr. Kay: May I have just a moment.

Mr. Hepp: May it please the Court, I intend to object to any cross-examination of this witness by any of the other defendants except insofar as matters which tend to deal with them. I believe that the defendant Raymond Wright, as standing alone, has an interest in not seeing what amounts to a redirect examination as concerns him.

The Court: What is the position of other de-

(Testimony of Dewey Taylor.)

fense counsel? It appears to the Court that is a reasonable request on the part of Mr. Hepp.

Mr. Kay: As I understood it, it sounded to me like it was—in other words, I would not be allowed to question this witness about——

The Court: Anything he did with Mr. [98] Wright.

Mr. Kay: That is true. In other words, only the things that concern my client.

The Court: Very well. That will be the order.

Mr. Hepp: We are in a very awkward situation trying to get along and agree on these points in common, few as they may be.

The Court: Yes, I appreciate your position.

Mr. Nesbett: As to my client, your Honor, all I can say is that as to this witness I have no cross-examination.

The Court: Thank you.

Mr. Kay: We don't care to cross-examine this witness.

The Court: Any redirect examination, counsel?

Mr. Plummer: Just several questions, sir.

DEWEY TAYLOR

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. Mr. Taylor, have you ever been convicted of a crime? A. No, I have not.

(Testimony of Dewey Taylor.)

Q. Now, do you recall when you got out of jail on bail? A. Around the first part of May.

Q. And do you recall about when you entered your plea of guilty in this case, sir?

A. Around the first part of December of last year.

Mr. Plummer: I have no further questions. [99]

The Court: Any recross, Mr. Hepp?

Mr. Hepp: I have no further questions.

The Court: Very well. You may step down, Mr. Taylor.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: I request that the bailiff call Mrs. Virginia Shields. She is back in the jury room.

VIRGINIA SHIELDS

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name?

A. Virginia Shields.

Q. And what was your occupation during the Labor Day week end of 1956?

A. Clerk in the Fifth Avenue Grocery and Liquor Store.

(Testimony of Virginia Shields.)

Q. That is here in the City of Anchorage?

A. Yes, it is.

Q. Who was the proprietor of the Fifth Avenue Cash Grocery at that time? A. Mrs. Peters.

Q. And you worked for her, is that [100] correct? A. I did, yes.

Q. Now, do you know any of the defendants in this case? A. No, I don't.

Q. Did you have occasion during your employment to accept—I will withdraw that question and ask that this be marked for identification as Plaintiff's Exhibit No. 8, I believe it is.

(The document was so marked.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Mr. Hepp: I object to any questions being put unless I have had an opportunity to examine the identification.

The Court: Very well. You may show it to counsel.

(The document was handed to defense counsel and thereafter returned to Mr. Plummer.)

Mr. Plummer: May I now approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mrs. Shields, I hand you what has been marked for identification only as Plaintiff's Exhibit No. 8. Would you look at it carefully and tell me what it is?

(Testimony of Virginia Shields.)

A. It's a check I took in on the Labor Day week end, Saturday afternoon, I believe.

Q. And would you tell me what kind of a check it is and, if you will, the serial number from the check on the front? [101]

A. Morrison-Knudsen 9078.

Q. Who is it made payable to?

A. Wendell R. Ware.

Q. Now, will you look at the back of the check and is there an endorsement on there?

A. Wendell R. Ware.

Q. And was that written in your presence?

A. Yes, it was.

Q. And can you tell us, Mrs. Shields, or can you point out to the Court and jury the man that wrote that if he is in the Court?

A. Third man over, first row, right side.

Q. Is that this gentleman in the blue suit?

A. Yes, it is.

Q. And if his name is Charles E. Smith then your answer is Charles E. Smith? A. Yes.

Q. Thank you. Now, do you remember anything about the purchase this gentleman made from you at the time he cashed the check, if in fact he made a purchase?

A. Yes, he made a purchase of whiskey, I believe it was.

Q. And did you give him the whiskey?

A. Yes, and also the change.

Q. And what is the check made out for?

A. \$177.47. [102]

(Testimony of Virginia Shields.)

Q. And you took out for the whiskey and gave him the balance? A. Yes.

Q. Do you recall whether or not, Mrs. Shields, you required any identification from this witness at the time he offered you the check?

A. Yes, he showed me identification.

Q. Do you recall what kind of identification it was?

A. Well, I am not sure whether it was a driver's license or what, but a little card with his picture.

Q. It did—— A. To the left.

Q. It did have a picture on it? A. Yes.

Q. Is the picture of the same gentleman or the same likeness as this gentleman sitting here?

A. Yes.

Q. Now, I wonder if you would look at the reverse side of the check again and see whether or not it carries a bank perforation on it? A. Yes.

Q. Can you tell me whether or not your company, the Fifth Avenue Grocery, realized any cash from this check?

A. Would you state that again, please?

Q. Did the company for which you worked at that time, the Fifth Avenue Grocery, realize any money from this check? [103] A. No.

Q. And would you tell me why, if you know?

A. Well, she didn't put it through the bank. One of the policemen picked it up, picked the check up.

Q. And why did they pick it up, if you know?

A. She called up the police department and

(Testimony of Virginia Shields.)

asked them if the M-K checks were good. He said no, he would be down to pick it up.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine then, Mr. Nesbett.

VIRGINIA SHIELDS

testifies as follows on

Cross-Examination

Mr. Plummer: I am sorry, your Honor. I apologize to Mr. Nesbett. I, at this time, ask leave of the Court to approach the witness and I'd like to offer that in evidence.

The Court: Is there any objection? Counsel have had a chance to see it.

Mr. Nesbett: I'd like to see it again, your Honor.

The Court: Very well. You may hand it to counsel again.

(Thereupon, the document was handed to defense counsel.)

The Court: Mr. Plummer, could you refer to the count?

Mr. Plummer: I am sorry, your Honor. That is check [104] number——

The Court: 9078.

Mr. Plummer: 9078 and it is mentioned in Count I of the indictment.

The Court: Thank you.

(Testimony of Virginia Shields.)

Mr. Nesbett: Your Honor, may I confer with Mr. Plummer a moment about this?

The Court: Yes.

Mr. Nesbett: I have no objection, your Honor, to this check going into evidence.

The Court: Without objection then it may be admitted and marked Government's Exhibit No. 8.

Mr. Plummer: There is one alteration that Mr. Nesbett wanted to make on the check. I told him I had no objection. We probably better have the in-court deputy make the alteration since it has been marked for identification.

The Court: Very well. Do you wish to state in the record what that is?

Mr. Nesbett: Extraneous marking stamps on the check, your Honor.

The Court: Is it on the instrument itself or is it on the container?

Mr. Plummer: I think it is loose within the container, your Honor. May we approach the bench?

(Thereupon, Mr. Plummer and Mr. Nesbett approached [105] the bench, without the reporter. After discussion the following proceedings were had:)

The Court: Mrs. Dome, will you please remove that white slip?

Deputy Clerk: Yes, your Honor, I did.

The Court: Mr. Plummer, is there any need to retain this slip?

(Testimony of Virginia Shields.)

Mr. Plummer: I would think not, your Honor, but——

The Court: It has identification——

Mr. Plummer: To make sure I will, if I may, take it back to my files.

The Court: Without objection. Now, you may proceed, Mr. Nesbett.

Q. (By Mr. Nesbett): Now, Mrs. Shields, about what time of the day did you receive this check?

A. It was in the afternoon.

Q. And that was Saturday afternoon, was it?

A. I believe so.

Q. You believe so? A. Uh-huh.

Q. Well, don't you know?

A. Well, it could have been Friday or Saturday afternoon, one or the other days.

Q. You have refreshed your recollection in connection with [106] the facts before coming here into court, haven't you?

A. No, I haven't thought much about it.

Q. You haven't thought much about it?

A. No, I haven't.

Q. Well, you have discussed the case surely with Mr. Plummer before coming in to be a witness?

A. Well, I don't know if I discussed it with him, no.

Q. You didn't. You don't know whether you did or not?

A. No, I wouldn't say I discussed it with him.

Q. Well, did you or didn't you?

(Testimony of Virginia Shields.)

A. Well, no.

Q. You did not. Now, it was either a Friday or a Saturday as near as you can recall?

A. Either Friday or Saturday. I don't recall which day.

Q. That was the Labor Day week end?

A. Yes.

Q. Was it rather a busy time?

A. No, we weren't busy.

Q. Is your store located in that Piggly Wiggly arrangement on Fifth Avenue.

A. No, it isn't.

Q. Where is it located?

A. 603 East Fifth Avenue.

Q. And you weren't busy at all, is that right?

A. No. [107]

Q. Do you remember this person coming to your store and buying the liquor?

A. Yes, I do.

Q. Very distinctly? A. Yes.

Q. Did you size him up and get a good mental picture of the person at the time you accepted the check?

A. I recall what he looked like, yes.

Q. And did you make a special point to remember his appearance any more than you would on any other payroll check?

A. Oh, not any more than any other.

Q. You cash a lot of payroll checks or did at that time in that store, didn't you?

A. No, we didn't.

(Testimony of Virginia Shields.)

Q. You did not? A. No.

Q. Then how does it happen you accepted this one?

A. Well, I have cashed M-K checks before and they were good.

Q. So you accepted this one?

A. Yes, I did.

Q. Well, as a matter of fact, you have accepted a lot of payroll checks in that store in the course of your business, haven't you?

A. A few. [108]

Q. Now, you say you don't recall whether he bought whiskey or what, is that right?

A. Whiskey, I would say.

Q. You would say. Well, do you recall?

A. Yes, it was whiskey.

Q. It was whiskey? A. Yes.

Q. Do you recall what he bought?

A. It was either Seagrams 7 or V.O.

Q. One bottle or two?

A. One. Just one bottle, a fifth.

Q. And took the entire change in cash, is that right? A. Yes, he did.

Q. Now, you saw an identification card with his picture on it, is that right?

A. Yes, I did.

Q. And compared the picture on the card, did you, with the person before you? A. Yes.

Q. When did you next learn or hear anything about that check?

(Testimony of Virginia Shields.)

A. When it came out in the papers.

Q. And when was that?

A. The following week. Tuesday I believe it was.

Q. You accepted the check on a Friday or a Saturday and heard nothing more about the incident until possibly the [109] following Tuesday?

A. That is right.

Q. And your information about having—or, your attention was redrawn to that check by reason of something you saw in the paper, is that right?

A. Yes.

Q. What did you see in the papers?

A. Just that the checks were going around the City of Anchorage.

Q. Actually the Fifth Avenue Liquor Store never presented the check for payment, did they?

A. Not to the bank, no.

Q. It was picked up by who?

A. A policeman.

Q. And in the course of your business after you accepted the check what did you do with it? Put it in the till of the cash register?

A. Yes.

Q. And then turned it over to your relief or were you the manager of the store in any fashion?

A. No. Mrs. Peters owned and managed the store.

Q. Then in the course of the routine of your duties you would turn over your cash and checks to Mrs. Peters, is that right?

(Testimony of Virginia Shields.)

A. Yes. We left everything in the till. She took care of everything. [110]

Q. Did you do that on that week end or do you recall? A. Turned over the cash you mean?

Q. Cash and checks?

A. I just left it in the till. I had nothing to do with that.

Q. And heard nothing more about the matter until approximately the Tuesday following?

A. That is right.

Q. Now, did you then on the Tuesday following give any description or make any identification of the person who had brought the check to your store? A. I didn't talk to anyone.

Q. And when did you next have occasion to consider the identity or description of the person who signed that check?

A. Oh, it was a year or so later that I was asked to identify the party.

Q. Over a year later. And from that point until today in court you were not asked to identify him, were you? A. Once I identified him.

Q. Well now, prior to your identification here in court today weren't you advised where the man was sitting?

A. Today I wasn't advised where he was sitting.

Q. Wasn't there a gentleman who went back to you in the back of this room and pointed out where the defendant Smith was sitting?

A. Not today. [111].

Q. Not today? A. No.

(Testimony of Virginia Shields.)

Q. When did that last happen?

A. Yesterday.

Q. It happened yesterday, didn't it?

A. Yes.

Q. It was a gentleman in a brown suit, wasn't it?

A. I'm not sure what color suit he had on.

Q. Who is the gentleman who came to you and told you where Smith was sitting?

A. Yesterday it was a policeman I believe.

Q. And—— A. I don't know his name.

Q. Which policeman?

A. Just a policeman.

Q. Well, which one? Is he in the room?

A. I don't see him.

Q. Do you know whether he is an Anchorage policeman or Territorial policeman or Federal policeman?

A. No, I don't. I wasn't informed. I don't know. Just a policeman.

Q. Where were you standing when he came to you and pointed out Mr. Smith?

A. Well, let's see. I believe I was in the District Attorney's office at the time, as far as I can remember. [112]

Q. In the District Attorney's office yesterday?

A. Yes.

Q. When he pointed out Smith to you?

A. Well, he had a drawing.

Q. Of where he was sitting in court?

A. Yes.

(Testimony of Virginia Shields.)

Q. I see. A. Yes, yesterday.

Q. What time yesterday? That was before we selected the jury wasn't it, you came into court and stayed until the witnesses were excluded?

A. It was, yes. That was before the jury was picked.

Q. Did Mr. Plummer ask you to come to his office for that purpose or for any purpose?

A. No.

Q. How did you happen to be in Mr. Plummer's office?

A. I had a telephone call from the girl asking me to appear.

Q. To come down to the U. S. Attorney's office?

A. Yes.

Q. And that was before lunch or after?

A. That was in the morning.

Q. That was in the morning, and this gentleman, this police officer then was in Mr. Plummer's office with a diagram or did he draw the diagram after you came?

A. I didn't see him draw it so I wouldn't [113] know.

Q. Did he make a sketch of the relative position that Mr. Smith occupied in the courtroom over in the Elks Club there? A. Yes.

Q. And was the sketch all prepared when you showed up in the District Attorney's office?

A. Yes, when I saw it.

Q. It was all drawn up?

A. It was drawn up.

(Testimony of Virginia Shields.)

Q. It was handed to you and a certain position marked Smith? A. Yes.

Q. Did you subsequently use that sketch and go and take a look at Smith? A. No, I didn't.

Q. Didn't you go over to the courtroom?

A. Yes.

Q. You did, didn't you? A. Yes.

Q. Did you take a look at Smith?

A. I don't recall whether I did or not.

Q. Well now, Mrs. Shields, you are here for one purpose only, aren't you, to identify a check of Mr. Smith? A. Yes.

Q. Well, didn't you after receiving that sketch at Mr. Plummer's office go over and take a look at Mr. Smith? [114]

A. We went in and sat down. I looked at him when I sat down.

Q. You did look at him?

A. When I sat down.

Q. Well, whether you were sitting down or standing up, you did look at him, didn't you?

A. Yes, I glanced over.

Q. You glanced over and saw him. You made a mental picture that that is Smith, didn't you? He was dressed just like he is now, wasn't he?

A. Yes.

Q. And so today you recognize Smith as being the same man that was pointed out to you by means of a diagram in the Elks Club courtroom yesterday, isn't that right? A. Yes.

(Testimony of Virginia Shields.)

Q. Did you observe this man who cashed that check place his signature on it, Mrs. Shields?

A. Yes.

Q. And did you compare the signature on it with the signature or the name on the identification card? A. Yes, I did.

Q. And you don't recall though what type of identification card he had, is that right?

A. No, just a card with his picture on it and name.

Q. Was there a signature on the identification card or merely a typed name? [115]

A. I don't recall now.

Q. Don't you ordinarily require as identification something with a man's signature on it?

A. Or a picture. Yes, like an I.D. card or something like that.

Q. You don't recall whether there was a signature or not on the card that was used to identify— A. No, I don't.

Q. Nor the type card it was?

A. No, I don't know what type of card it was.

Q. And do you recall specifically the person signing the check? A. Yes.

Q. What did he use as a support in order to sign the check? Counter?

A. Yes, we have a counter.

Q. Is there a counter there?

A. Yes, there was.

Q. And did you watch him as he signed it?

A. Yes.

(Testimony of Virginia Shields.)

Q. Did he borrow a pen from you to sign it?

A. I don't recall.

Q. Well, do you recall anything else in connection with the signature? A. No. [116]

Q. Do you recall whether he signed with his left hand or his right hand or how?

A. No, I don't recall which hand.

Q. You don't recall that. You do recall, however, that you recognize the man immediately a year later after he was shown to you?

A. Yes, I recognized him.

Q. And after the diagram was presented to you, you then took another look at him yesterday in the Elks Club? A. Yes.

Q. Mrs. Shields, did you cash any other checks over that Labor Day week end, pay roll checks?

A. No.

Q. Had you, or did you have occasion to cash any other M-K checks in that area of time, that is, shortly before or shortly after Labor Day?

A. No. Just that one.

The Court: A little louder so the jurors can hear you.

A. No. I just cashed that one.

Mr. Nesbett: That is all.

The Court: Mr. Hepp, do you have any questions?

Mr. Hepp: I have no questions.

The Court: Mr. Kay.

Mr. Kay: Just a moment, your Honor. [117]

The Court: Very well.

(Testimony of Virginia Shields.)

Mr. Kay: I have no questions.

The Court: Very well. Any redirect, counsel?

Mr. Plummer: Just several questions, your Honor.

VIRGINIA SHIELDS

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. Mrs. Shields, is there any doubt in your mind that the gentleman sitting here is the gentleman who cashed the check on this Labor Day week end? A. There is no doubt.

Q. Now, to clear up any misunderstanding that might arise, although you did not talk with me did you talk with somebody else in my office?

A. Yes.

Q. And it was one of my assistants?

A. I guess so. I don't know his name.

Q. You don't know the gentleman's name?

A. No, I don't.

Mr. Plummer: That is all the questions I have.

The Court: Is there any recross?

Mr. Nesbett: Could I ask another question, your Honor? [118]

The Court: Pertaining to prior direct or redirect?

Mr. Nesbett: Would be hard to say. I am sure there won't be any objection.

The Court: You may proceed.

VIRGINIA SHIELDS

testifies as follows on

Recross-Examination

By Mr. Nesbett:

Q. Mrs. Shields, there are other employees in that liquor store, are there not?

A. No. Mrs. Peters and myself were the only two.

Q. Do you know whether Mrs. Peters took any checks over that week end, the M-K checks?

A. No, she didn't.

Q. She did not? A. No.

Q. It is a grocery store combined with a liquor store, is it? A. Yes.

Q. Six hundred block on East Fifth?

A. 603 East Fifth Avenue.

Mr. Nesbett: That is all.

The Court: Very well. You may step down then, Mrs. Shields.

(Thereupon, the witness was excused and left the stand.) [119]

The Court: You may call your next witness.

Mr. Plummer: Ask the bailiff to summon Mr. Henry Futor.

HENRY FUTOR

called as a witness for and on behalf of the Plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, Mr. Plummer.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Henry Futor, F-u-t-o-r.

Q. And will you tell us what your occupation was over the Labor Day week end of 1956?

A. Clothing salesman at the Hub Clothing Company.

Q. And that is still your employment, is it?

A. Yes.

Q. Who is your employer?

A. Harold Koslosky.

Q. Now, what, if anything, unusual occurred on that week end as regards the case?

A. Well, that Saturday prior to the Labor Day holiday we processed and cashed three supposedly good Morrison-Knudsen checks.

Mr. Plummer: May I have this marked for identification. It will probably be No. 9. [120]

The Court: Yes.

Mr. Plummer: I will show it to counsel.

The Court: Yes, if you will please.

(Thereupon, the document was handed to defense counsel and thereafter returned to Mr. Plummer.)

(Testimony of Henry Futor.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Futor, I hand you what has been marked for identification only as Plaintiff's Exhibit No. 9 and ask you to look it over and tell me what it is, if you know?

A. Well, this is one of the checks that we cashed down there on that Saturday.

Q. Would you tell me what it purports to be?

A. Pardon me?

Q. Will you tell me what it purports to be, if it has a company name and a number and the amount and the payee

A. Well, it is a Morrison-Knudsen check, with a signature and the amount of—net amount of \$177.47.

Q. And would you tell me the name of the payee, sir?

A. Wendell R. Ware.

Q. Would you tell me the serial number of the check?

A. Serial number of the check is 8833.

Q. Do you know from your own recollection, did you take any of these checks that day? [121]

A. Well, I did. I handled all three of them and waited on the customers and in each case they made a purchase and I did inspect the identification, such as it was, and verified the signature on the identification card with a signature on the check, endorsement on the check and assumed that they took—they were in order and Mr. Koslosky then deducted

(Testimony of Henry Futor.)

the amount of the purchase and handed over the change.

Q. And do you recall, sir, what the items were they purchased, these people, if you know?

A. Well, I do. The first purchase was a pair of Red Wing, by brand name, boots.

Mr. Nesbett: Could I interrupt merely to ask if he testifies to all three checks or as to this check?

Mr. Plummer: He is testifying now as to the three purchases made by M-K checks that week end.

Mr. Kay: I object, your Honor, to any testimony concerning the other two checks unless they are counts in this indictment.

The Court: Are they in the indictment, counsel?

Mr. Plummer: I think not, your Honor, but I will——

The Court: Objection sustained then.

Mr. Plummer: May I be heard before you rule?

The Court: Well, I have ruled but you may be heard.

Mr. Plummer: I was going to mention to the Court and to Mr. Kay, of course, the very, very common rule of the same [122] and similar transactions prove motive, mistake and so on. I think it is a very valid proffer, but rather than struggle with the thing at this time I will withdraw my question. I will advise Mr. Kay, however, that one of these days when he makes it I am going to cite him some law.

Mr. Kay: Fine, we will have a good time.

Mr. Plummer: If I may have just a minute to collect my thoughts, your Honor.

(Testimony of Henry Futor.)

The Court: Yes, you may.

Q. (By Mr. Plummer): Now, Mr. Futor, I wonder if you would be good enough to look around the courtroom and see if you recognize anybody in this courtroom that passed one of those checks to you on that date?

Mr. Nesbett: I object to that question, your Honor. It is not confined to the exhibit that is before the Court for identification. The only question is, can he identify the person who passed that check.

The Court: Objection sustained. He may rephrase the question.

Q. (By Mr. Plummer): Did you take all three M-K checks, make the sales on all three M-K checks? A. I did.

Q. And is the party, or, can you recall, sir, the name that [123] the party used?

The Court: Pardon me just a moment. Mr. Johnson, that is not the gentleman. There was another gentleman came in and maybe he is in the hall. That is all right. He is not smoking in the courtroom now. That is my concern. It is so close in here at best, besides the fact you are never permitted to smoke in the courtroom anyway. I am sorry, Mr. Plummer.

Mr. Plummer: Thank you, your Honor.

Q. (By Mr. Plummer): Do you recall the name that was used in the endorsement of the check that you took, sir? Was it Wendell R. Ware?

A. Well, I don't recall that from memory, Mr.

(Testimony of Henry Futor.)

Plummer, but as it comes back to me—naturally, I see it here.

Q. Yes, and will you look at the back of the check that you have? Would you see how it is endorsed?
A. Endorsed Wendell R. Ware.

Q. Do you recognize in the courtroom the party that so endorsed and negotiated that check?

A. I am afraid I can't.

Mr. Plummer: May I have just a minute, your Honor.

The Court: You may.

Q. (By Mr. Plummer): Can you testify, sir, that that is one of the three checks that were taken in on that day?

Mr. Hepp: I object; leading and suggestive. I don't [124] think that is a proper question.

The Court: The objection is overruled. He may answer that question.

A. Well, I can testify that it is one of the three checks that was taken that day, definitely.

Q. But—

A. Without question in my mind this is definitely one of the three checks that was taken in that day at the store.

Q. Now, subsequent to its being taken in on that date do you know what, if anything, happened to the check?

Mr. Hepp: I object. I believe this witness can state what he may have done with the check. I think the question is too broad and would bring in possibly a dangerous answer. We can't evaluate the

(Testimony of Henry Futor.)

answer or his offers. He can state those things that he did. I think what was done is very broad and we ask it not be allowed.

Mr. Plummer: He can state if he knows, your Honor.

The Court: But only if you know, Mr. Futor. You may state as to what did take place with the check, if anything.

A. Well, of course, the check——

The Court: That is, of your own personal knowledge. What somebody else may have told you may not be proper. Do you understand that?

A. Yes, sir. Well, in that case then, after they left my hands, Mr. Koslosky completed the transaction. [125]

Mr. Hepp: Now, I object to the witness continuing then, this being purely hearsay.

Mr. Plummer: Let him tell what he saw until he starts telling what——

Mr. Hepp: He said Mr. Koslosky completed the transaction.

Mr. Plummer: He hadn't completed his answer. Maybe he has.

Mr. Hepp: I believe it is going to be dangerous. Once it is out it is too late.

The Court: Mr. Futor, I have instructed you not to testify as to what somebody may have told you, but what you actually know of your own knowledge, and you have testified that Mr. Koslosky completed the transaction. Now, you may proceed, counsel.

(Testimony of Henry Futor.)

Q. (By Mr. Plummer): Now, did you or did anybody else within your sight have any further dealings with this check, sir, or do you know of your own knowledge anything further about this check, not what somebody told you but of your own knowledge?

A. Well, of my own knowledge I know they were deposited in the bank in the National Bank of Alaska.

Mr. Hepp: I object to that and ask it be stricken. I don't see how he could possibly know that of his own knowledge. It would have come to him as purely hearsay and that is what we [126] have been trying to avoid.

The Court: How do you know?

Mr. Plummer: The witness testified, he said of his own knowledge he knew it was.

The Court: The objection is overruled until it is established that he is testifying from hearsay, of course, in which event then it would be highly improper.

Mr. Hepp: Excuse me. May I ask the Court to instruct the witness as to what the word knowledge means in that sense. To a layman it means anything he comes by knowing in any manner and it may be told to him by somebody else and he then deems it his knowledge, and it is still objectionable.

The Court: In this sense, Mr. Futor, the word knowledge is used in a restrictive sense, only what you personally know, not what may have come to your attention. Now, you have testified that this

(Testimony of Henry Futor.)

check was deposited in the bank. Do you know that of your own knowledge or what somebody else told you?

A. Well, it was the procedure in this business.

The Court: Well, the objection is sustained then.

Q. (By Mr. Plummer): Now, did you have occasion, sir, to see the check again after that week end when it was presented to you as part of the payment for the sale you made? A. I did.

Q. And would you tell us when that was, [127] sir?

A. Well, when this check was returned to the Hub Store by their bank, the one in which it was deposited, with the bank's notation—just what the notation was on there I have forgotten, but it was either an unauthorized signature or counterfeit or forgery. I rather think it was unauthorized signature, whatever they stamped on there.

Mr. Hepp: I am going to object to that testimony. This witness is guessing at what may have been on it when it came from the bank.

The Court: The objection is sustained. You may testify as to what was on it.

Mr. Hepp: I would like to have that portion of his testimony stricken from the record.

The Court: The motion is granted and the jury is instructed not to consider the answer given by this witness. You may proceed.

Mr. Plummer: May I have just a minute?

The Court: Yes, you may.

Mr. Plummer: I have no further questions.

HENRY FUTOR

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. Mr. Futor, did you take all three of the M-K checks that [128] were received by your store on that day?

A. I did and I processed them.

Q. Are you the manager there in Mr. Koslosky's absence? A. Oh, after a fashion, yes.

Q. But you do pass on all the checks that are presented for cashing, is that right?

A. In many instances, yes, if he doesn't—happens to be away or out.

Q. After you had cashed the checks Mr. Koslosky had the most to do with them thereafter, is that right? A. I didn't get that?

Q. I say, after you had accepted the checks Mr. Koslosky had the most to do with them thereafter, did he not? A. Oh, yes. Yes.

Q. And it was more his concern as owner of the store than yourself as manager, isn't that a fact?

A. Right.

Q. Now, actually, Mr. Futor, until you were reminded of the name Wendell Ware you wouldn't have known that that check, as you say now, was one of those accepted, isn't that the fact?

A. Well, I just didn't quite understand that question.

Q. When were you subpoenaed to appear here?

A. Yes, sir.

(Testimony of Henry Futor.)

Q. And on what date were you subpoenaed to appear? [129]

A. I didn't bring the subpoena.

Q. Was it to appear yesterday?

A. I was subpoenaed to appear.

Q. Yesterday? A. Yes, sir.

Q. And did you appear first in response to that subpoena at the courtroom at the Elks Hall?

A. Yes, sir.

Q. Or did you appear in Mr. Plummer's office?

A. Well, I appeared at the office and then was instructed to go to the courtroom in the Elks Club.

Q. And at the time you reported to the office did you discuss the matter of checks that had been received by Koslosky's Store with Mr. Plummer or any of his staff? A. No.

Q. Did you discuss the checks that Koslosky's Store had received with Mr. Plummer at the courtroom yesterday? A. No, sir.

Q. Or did you discuss it last night or today with him prior to taking the witness stand?

A. No, sir.

Q. It is only because the check was handed to you on the witness stand that you happened to remember that it is one of the three checks you took that day, is that right?

A. Yes, that is right. [130]

Q. You have no recollection then other than that it was one of the three?

A. Well, I have the recollection that this is one of the three.

(Testimony of Henry Futor.)

Q. What causes you to remember that it was one of three?

A. The amount. I remember the amount very well. \$177.47. The date. Pay period ending August 19. We were cashing this along about September 2nd. That all is remindful to me of this check.

Mr. Nesbett: That is all, your Honor.

The Court: Mr. Hepp.

Mr. Hepp: I have no questions.

The Court: Mr. Kay.

HENRY FUTOR

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mr. Futor, just one question. Do you recall what time in the afternoon it was when you cashed this check?

A. Mid-afternoon.

Q. 3:00 o'clock, 4:00 o'clock?

A. Between 2:00 or 3:00, I'd say.

Mr. Kay: That is all the questions I have.

The Court: Any redirect, counsel?

Mr. Plummer: No, your Honor. [131]

The Court: It is now after 3:00. Should we take a short recess at this time?

Mr. Plummer: Satisfactory with the prosecution.

The Court: Very well. Court will go into recess for a period of 10 minutes.

(Whereupon, at 3:10 o'clock p.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may call your next witness.

Mr. Plummer: May I inquire if there are any witnesses in the courtroom that are under Government subpoena? (No response.) Your Honor, I would like to call—for the sake of the record the last check we talked about was No. 8833. It was mentioned in Count 3 of the indictment. I would like to call Mr. Ivan Barton.

Mr. Hepp: Excuse me, may it please the court, I have an observation to make. I think Mr. Plummer has confined the witnesses who are under subpoena. We do not desire to waive the rights of that rule and any witnesses he intends to or will call and not only the ones that are under subpoena.

Mr. Plummer: I think that was the statement I made. I think I will probably know the witnesses that I intend to call that might not be under subpoena. As you well know, from the witness stand, people who are identification witnesses I haven't talked with them. I don't know whether they are present in court [132] or not.

The Court: Now, your next witness, please.

Mr. Plummer: Mr. Barton.

IVAN BARTON,

called as a witness for and and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Ivan Barton.

Q. And would you tell me what your occupation was over the Labor Day weekend of 1956 here?

A. I am a partner in the Union Club.

Q. And were you a working partner that day at the Union Club? A. Yes.

Q. On duty there? A. Yes.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Barton, I hand you what has been marked for identification only as Plaintiff's Exhibit No. 10 and ask you what it is, if you know? A. It is a check. [133]

Q. And will you be good enough to tell us the name of the company, the name of the payee, and the serial number of the check?

A. It is a Morrison-Knudsen Company check. Payee is Wendell R. Ware. \$177.47.

Q. What is the serial number on the check?

A. 8895.

Q. Now, have you had occasion to see that check before? A. Yes, I have seen it before.

Q. Did you have occasion to see it on Labor Day weekend 1956?

(Testimony of Ivan Barton.)

A. Well, I saw it when it come back from the bank after the weekend.

Q. Will you tell us, sir, if you know who cashed that check in your establishment?

A. No, I don't know who cashed this particular check. There was four checks presented.

Mr. Hepp: Just a moment. I object to any further. I think the witness responded to the question and I ask another offer be made.

The Court: I feel, Mr. Hepp, that the answer to the question was responsive. He was explaining why he didn't know this.

Mr. Hepp: I quite agree with the Court. I was asking that he not continue on until after he had been asked for another offer so we can evaluate it. [134]

The Court: Thank you. You may proceed, Mr. Plummer.

Mr. Plummer: Thank you, your Honor.

Q. (By Mr. Plummer): Now, did you receive a check, Morrison-Knudsen check, that week end which was made payable to the order of Wendell R. Ware?

A. Yes.

Q. And was there a gentleman that you noticed that week end in your establishment who purported to be Wendell R. Ware?

Mr. Nesbett: I object to that question, your Honor, as having no connection whatsoever with the case. He admits that he wasn't there over the week end. He is not competent to answer. He came back after the week end and saw the checks.

(Testimony of Ivan Barton.)

Mr. Plummer: That wasn't his testimony, your Honor. If the record is read back that is not his testimony.

The Court: The objection is overruled. He may answer the question; of your own knowledge, of course, Mr. Barton, not what somebody may have told you.

A. Will you repeat the question?

The Court: It may be read back.

(Thereupon, the Reporter read question line 8 above.)

A. Yes.

Q. (By Mr. Plummer): And do you see him present in the courtroom today?

A. I do. [135]

Q. And will you point him out to the Court and jury?

A. He is right back of the gentleman right back there (pointing), third seat in.

Q. Third seat in the front row?

A. Uh-huh.

Q. Would this be the gentleman, sir?

A. That is the gentleman.

Q. And if his name is Charles E. Smith it would then be Charles E. Smith, is that correct?

A. Uh-huh.

The Court: You will have to speak louder, Mr. Barton, please.

A. Yes.

Mr. Plummer: May I have just a minute, your Honor.

(Testimony of Ivan Barton.)

The Court: You may.

Q. (By Mr. Plummer): Now, do you know, sir, what happened to this check after it was taken in during the normal course of business over that Labor Day week end, of your own knowledge?

A. Well, I didn't take it myself to the bank, but my partner took it to the bank.

Mr. Hepp: Just a moment. I object. That is hearsay. I think he responded he didn't take it to the bank.

The Court: The objection is sustained beyond the fact that you don't know what happened after the week end. [136]

Mr. Plummer: May I ask one further question, your Honor?

The Court: Very well.

Q. (By Mr. Plummer): Did you see it after the Labor Day week end around your establishment? A. Yes.

Q. And what was the occasion for you seeing it, sir?

A. Well, I come down to work, I think it was probably Thursday, and the check was back from the bank. Our bank is not the First National Bank. Our bank is the Bank of Alaska and it takes a couple of days to process it through the bank and I don't remember which day it was of the week.

Q. And was the check honored when presented for payment, sir?

A. No, it was deducted from our account.

Mr. Plummer: May I approach the witness, your Honor.

(Testimony of Ivan Barton.)

The Court: You may.

Mr. Plummer: I offer what has been marked for identification only as Plaintiff's Exhibit No. 10 in evidence.

The Court: Is there any objection?

Mr. Hepp: We object to it and we'd like to ask some questions of this witness.

The Court: You may do so.

Q. (By Mr. Nesbett): Mr. Barton, what hours or shift did you work over that Labor Day week end? [137] A. From 5:00 until closing.

Q. 5:00 p.m. until closing? A. Yes.

Q. That would be until 1:00 a.m.?

A. Well, I think it was 2:00 a.m.

Q. 2:00 a.m., and on what days did you work? All the days? A. All the days.

Q. All the days of that holiday week end?

A. All the days.

Q. Now, you have known the defendant Charles Smith for a long time, haven't you?

A. No, I haven't.

Q. Well, haven't you known him in the construction industry, his superintendent, co-workers for a number of years?

A. No, I haven't known him personally.

Q. You have known of him, is that right?

A. Well, I don't think I even knew of him that I know of.

Q. Do you remember yourself taking this check in and giving cash for it?

(Testimony of Ivan Barton.)

A. I don't remember of taking that check and giving cash for it.

Q. You cash lots of payroll checks there, don't you?
A. Yes, quite a few.

Q. At the Union Club?
A. Yes. [138]

Q. As a matter of fact, you advertise over the radio, "Come to the Union Club. We cash payroll checks," don't you?
A. That is right.

Q. And you don't remember this check at all, do you?

A. I remember the check. Surely, I remember the check. It comes back from the bank and you have to pay the bank \$177.00 for it, you sure remember.

Q. That is your only connection with this check, isn't it?
A. Except cashing it.

Q. You remember cashing it yourself?

A. Well, it was cashed in the place.

Q. But you, yourself didn't? You don't remember cashing it yourself, do you?

A. I don't remember cashing it.

Q. No. Now, have you talked to Mr. Plummer prior to coming into court today about Wendell R. Ware?
A. Yes.

Q. And when did you last discuss Wendell R. Ware with him?

A. Well, I don't think I discussed Mr. Ware recently with Mr. Plummer. I did with his assistant, I guess it is, in his office.

Q. I see. Well, when did you discuss Mr. Ware with Mr. Plummer's assistant?

(Testimony of Ivan Barton.)

A. This week sometime, last week. Latter part of last week. I think it was Thursday. [139]

Q. Last Thursday. Now, Mr. Barton, have you discussed the case at all with Mr. Plummer or his assistant since last Thursday?

A. Except, I think it was yesterday.

Q. You discussed it with him yesterday, didn't you?

A. He told me the things about the court that I would be asked; not particularly about the check.

Q. And where was that discussion had, over in his office?

A. Over in his office.

Q. And was Sgt. Laird here present?

A. I don't think so.

Q. You did, of course, discuss Mr. Smith and how he appeared and so on, did you not?

The Court: Pardon me. Now you are going into cross-examination here. This is for the purpose of admission or denial of admission of this check.

Mr. Nesbett: Well, I thought that he was through with his direct.

The Court: But then the only thing before the court is the admissibility or inadmissibility of the check.

Mr. Nesbett: I see. All right, your Honor, I am sorry. I will confine it strictly to the check.

The Court: Very well.

Q. (By Mr. Nesbett): Then you, yourself, don't remember this check coming across [140] the counter of the Union Club? Your only recollection or remembrance of it, you say, as partner there you

(Testimony of Ivan Barton.)

had occasion to notice it came back from the bank, is that right?

A. No. I know it come across the counter while I was on shift so I must have cashed it because the checks cashed in the day time by my partner, he bales them up. When I come down it is an empty box. It was in the bale of this cash from the night shift.

Q. So you must have cashed it?

A. I must have cashed it.

Mr. Nesbett: I have no further questions on the check, your Honor.

The Court: Mr. Hepp, do you have any questions on the check itself?

Mr. Hepp: Mr. Nesbett has covered the field I wanted.

Mr. Plummer: I renew my offer, your Honor.

The Court: Is there objection?

Mr. Nesbett: I certainly agree with Mr. Hepp's objection. The objection stands, must be ruled on.

The Court: Objection overruled. It may be admitted and marked Government Exhibit No. 10.

Mr. Plummer: I have no further questions, your Honor, of Mr. Barton.

The Court: Could you advise the Court as to which count? [141]

Mr. Plumber: I am sorry, your Honor. This is check 8895 mentioned in Count No. 4 of the indictment.

The Court: Thank you. Now, you may cross-examine, Mr. Nesbett.

IVAN BARTON

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. You don't remember yourself of actually taking this check across the counter, do you, Mr. Barton? A. I do not.

Q. Then you would have no recollection of the person from whom you received the check, would you?

A. Well, I have a recollection of cashing a check for a fellow that later I saw and I knew I had cashed a check for him. He was Mr. Smith.

Q. I see. Well now, I believe you said in response to one of Mr. Plummer's questions that you recall a man named Wendell Ware being around that week end, is that right?

A. Well, the man Wendell Ware, when I saw him, was over in the federal jail, I guess, and I identified him as a man I had cashed a check for during that period of time.

Q. Well, when did you make that identification?

A. Oh, sometime last spring, I think. [142]

Q. Did you identify him as being a man who passed himself as being Wendell R. Ware in your establishment?

A. No, I didn't, no. I just identified him as being a man I cashed a check for.

Q. Cashed a check for? A. Yes.

Q. Then you didn't connect the man up with Wendell R. Ware at that time, did you?

(Testimony of Ivan Barton.)

A. No.

Q. You didn't then—your only knowledge that the man may have ever been called Wendell R. Ware was knowledge you obtained from Mr. Plummer or his assistant, wasn't it?

A. Well, I was told what he used his name for on the check and what his name was. His name was Smith.

Q. So you assumed he was Wendell R. Ware or had called himself Wendell R. Ware, isn't that right?

A. Well, I didn't assume anything. I just——

Q. You don't recall the man named Wendell R. Ware coming to you and asking to cash a check, do you?

A. As Wendell R. Ware?

Q. Yes. A. I do not.

Q. And you say you only identified Mr. Smith as being a man who cashed a check in your establishment over that week end, is that right? [143]

A. That is right.

Q. So your only knowledge of Smith and Wendell R. Ware having any connection is what you gained from being associated with the case, isn't that right?

A. No. When I got the check back I begin to wonder who cashed that check, to picture in my mind of someone that cashed that particular check, and I finally come to the conclusion that it was a fellow that I had to call over from the——

The Court: Pardon me. (Noise outside. Unable to hear.)

(Testimony of Ivan Barton.)

A. I come to the conclusion in my own mind it was a fellow I had to call over and sign his check and show an identification. He was standing back of the place, in the back. He was four or five feet from the little counter where we used to cash checks.

Q. Well, did you call a person over and ask him about the check? Is that—

A. No, I didn't. Just to look at his identification.

Q. You came to the conclusion that must have been what happened, is that right?

A. Pardon?

Q. You came to the conclusion you must have done that when you were thinking it over later, is that right?

A. That is right.

Q. Why did you say then in response to the question that you don't remember cashing this check? If you remember a [144] Wendell R. Ware and you remember that this must have been the man, why do you say you don't remember cashing this check?

A. Well, there was four of those checks come in on the week end and I don't remember which particular check that was, Wendell R. Ware's or the other checks. It was one of those M-K checks.

Q. Now, Mr. Barton, were you told yesterday in Mr. Plummer's office to look for Mr. Smith over at the Elks Club?

A. To look for him?

Q. Yes.

A. No.

Q. Were you told where he might be sitting?

A. Yes.

(Testimony of Ivan Barton.)

Q. Were you given a diagram of where he might be sitting? A. No.

Q. Did you see a diagram or sketch that portrayed the relative positions of persons in the courtroom? A. No.

Q. You were told then where Mr. Smith was sitting, is that right?

A. I was told where he was sitting.

Q. And were you told to take a look at him?

A. No.

Q. You were just told, "There is where Smith is going to be [145] sitting," is that right?

A. I was asked if I knew him, where he was sitting, and I said yes; if I knew his face, I said yes.

Q. Why did they then go on to tell you where he was sitting?

Mr. Plummer: I object to that question. He can't answer that.

Mr. Nesbett: Maybe he can't but I want the court to be aware of it, your Honor.

The Court: Well, the objection will be sustained to that question, but you may rephrase your question and ask if he knows why they told him.

Q. (By Mr. Nesbett): Do you know why the District Attorney went ahead and told you where Smith was sitting when you told him in the first instance that you knew Smith?

A. I don't know why.

Q. You don't know that?

A. No, I don't.

Q. Well, the only logical conclusion would be——

(Testimony of Ivan Barton.)

Mr. Plummer: I object to any——

The Court: Objection sustained.

Mr. Nesbett: I haven't asked the question.

The Court: Excepting this, you are making a statement.

Mr. Nesbett: I will make a question of it.

The Court: The question now attempted to be stated [146] is improper and the objection is sustained.

Q. (By Mr. Nesbett): You indicated some doubt about whether or not you could recognize Smith or Ware, didn't you, to Mr. Plummer before he told you where he was sitting?

A. No, I didn't at all because I knew I could recognize him because I have saw him around town here since—for the last month or two.

Q. Was he pointed out to you when he came to town at all? A. No.

Q. I asked you in the first instance if you hadn't known him for a number of years. You have, haven't you? A. No, I haven't.

Q. But you knew him when you saw him around town?

A. I had already been down to the Marshal's Office.

Q. So you remember it from that incident, is that right? A. Yes.

Q. Well now, why did you go on over to the courtroom after you had talked to Mr. Plummer yesterday?

(Testimony of Ivan Barton.)

A. He told me to go—the girl in the office told me to go over to the courtroom.

Q. You wanted to take a look at Smith, didn't you? He asked you take a look at Smith, didn't he?

A. No.

Q. Well, he asked you if you recognized Smith, didn't he? [147]

A. I don't remember him asking that question.

Q. Well, he asked you if you knew Smith, didn't he?

A. He asked me if I knew Smith but not yesterday. That was previous to that.

Q. You said, "Yes, I know him," didn't you?

A. Yes.

Q. Yet he went ahead to take the trouble to tell you exactly where he was sitting in the courtroom, didn't he?

A. I don't remember whether he told me exactly where he was sitting.

Q. Well, I understood now in your previous testimony, Mr. Barton, that he did tell you?

A. Well, he probably did tell me.

Q. Then which is true? He did tell you, didn't he?

A. I don't think Mr. Plummer ever did tell me where he was sitting.

Q. That was his assistant, wasn't it?

A. I think it was his assistant that told me where he would be sitting.

Q. Was it Sgt. Laird here to my right?

A. Over in the Elks, you mean, yesterday?

(Testimony of Ivan Barton.)

Q. Yes.

A. Yes, I think Sgt. Laird told me where he was sitting.

Q. He told you where he was sitting over in the Elks Club, did he? At the Elks Club did Sgt. Laird tell you where Smith was sitting? [148]

A. Yes.

Q. Who in Mr. Plummer's office told you where he would be sitting?

A. I think it was his assistant, probably.

Q. Thin assistant, wore glasses, Mr. Duggar?

A. Well, I don't remember. Somebody told me over there where he would be sitting.

Q. Well, you were told in the office, then by Sgt. Laird over in the courtroom. Now, were you reminded again here today where he might be sitting in the courtroom? A. Uh-huh.

Q. You were? A. Yes.

Q. Who reminded you on that occasion?

A. I think it was Mr. Anderson.

Q. Mr. Anderson?

A. I think his name is Anderson.

Q. Who is he, do you know? Is he in the room?

A. He is a city detective, I think.

Mr. Nesbett: I have no other questions.

The Court: Mr. Hepp.

Mr. Hepp: I have just one question.

IVAN BARTON

testifies as follows on [149]

Cross-Examination

By Mr. Hepp:

Q. This may have been answered, but it has escaped me. If you didn't see this check cashed or have no recollection of it what is your explanation as to how you know who cashed it?

A. I don't know who cashed it. I know that I cashed it. I mean, I don't know who presented it.

Q. You mean, the person who came in and offered it?

A. I don't know except from recalling instances in cashing checks, that you do in a place, and when it comes back from the bank and I begin to wonder who cashed it, if I knew the people.

Q. So you have wondered into a belief that it may be somebody in this courtroom, is that right?

A. I don't know that it was cashed by this man in the courtroom, but I know that I have cashed checks for him in the place.

Q. Did I understand you to say you don't know whether this check here was cashed by anybody in this courtroom? A. No, I don't.

Q. You don't know? A. No, I don't.

Mr. Hepp: Thank you.

The Court: Mr. Kay. [150]

Mr. Kay: Just one question.

HELEN BURNETT,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name?

A. Helen Burnett.

Q. Do you and your husband have a joint business venture here in the City of Anchorage?

A. Yes, we do.

Q. Would you tell me the name?

A. The Club Bar.

Q. And did you so own it on the Labor Day week end of 1956? A. Yes, we did.

Q. And do you and your husband both work in the bar? [153] A. Yes, we do.

Q. And were you working there that week end?

A. Yes, I was.

(At this time a document was handed to defense counsel and thereafter handed back to Mr. Plummer.)

Mr. Plummer: May I approach the witness, your Honor.

The Court: You may.

Q. (By Mr. Plummer): I hand you, Mrs. Burnett, what has been marked for identification only as Plaintiff's Exhibit No. 11 and ask you if you will tell us what it is?

A. It's one of the checks that I cashed over the Labor Day week end.

(Testimony of Helen Burnett.)

Q. And would you tell me—reading the heading on the check, the payee, the serial number, and the amount?

A. Morrison-Knudsen Company Check No. 8965 to be paid to the order of Wendell R. Ware in the amount of \$207.26.

Q. Now, do you know who accepted that check on behalf of your establishment?

A. Yes, sir, I did.

Q. And would you give us some of the details, if you recall, when you accepted it?

A. Yes, sir. The gentleman came in, asked me if I would cash a check for him. I said yes, if it were a pay check. He handed me the M-K check and the identification badge [154] with his picture on it. I proceeded to cash the check and give him the money and he in turn ordered a drink. I believe he ordered a drink, whiskey and a beer.

Q. Maybe a shot and beer chaser?

A. Uh-huh.

Q. And did he endorse the check in your presence?

A. Yes, he did.

Q. And will you look at the back of the check and did he endorse it with that name?

A. Yes, he did.

Q. Now, this identification card that he presented to you, did that correspond with the face of the man that presented the check?

A. Yes, it had his picture on it.

Q. Now, will you tell us if you see that man in court here today?

(Testimony of Helen Burnett.)

A. Yes, I do. He is sitting right over there. The third gentleman in the first row.

Q. That would be this gentleman in the blue suit with the handkerchief in his pocket?

A. Yes, sir.

Q. If his name is Charles E. Smith, is that Charles E. Smith?

A. That is the gentleman.

Q. Mrs. Burnett, did you later cause this check to be deposited in the bank? [155]

A. Yes, sir, on the following Tuesday.

Q. And was the check honored when it was presented for payment?

A. It was honored at that time, however, it was later declared to be a forgery and returned.

Q. What bank did you present it to?

A. The First National Bank.

Q. And it was later returned to you and dishonored?

A. This check was not returned to me, no, sir. A photostatic copy was.

Q. And did they advise you at that time why they did not return it? A. Yes.

Q. Will you tell me why?

A. It was a forged check.

Mr. Plummer: May I approach the witness, your Honor.

The Court: You may.

Mr. Plummer: I am going to offer this in evidence. I show it to counsel again.

(Testimony of Helen Burnett.)

(The document was handed to defense counsel.)

The Court: Is there objection?

Mr. Hepp: Just a moment.

The Court: Surely.

Mr. Nesbett: You Honor, I object to the acceptance of the check into evidence and ask if your Honor would be good [156] enough to reserve your ruling on it until after the cross-examination. In view of what happened with respect to the last check, your Honor, we thought if your Honor would delay ruling until after all the evidence is in it might——

The Court: Well, counsel, though we must take these matters as they come up. If we don't it is very easy to forget. I would prefer to follow the customary and standard practice of the court. Now, counsel have leave to interrogate at this time as to the admissibility or inadmissibility of this check only, then you may thereafter cross-examine as to other facts. Do you wish to examine at this time?

Mr. Nesbett: I have no desire to examine as to the check.

The Court: Mr. Hepp?

Mr. Hepp: Well, no. I certainly make an objection at this time and I know the Court has ruled.

The Court: Very well. Objection overruled. It may be admitted and marked Plaintiff's Exhibit No. 11.

Mr. Plummer: May I for the sake of the record advise the Court and the jury that we are talking

(Testimony of Helen Burnett.)

about Check No. 8965 which is mentioned in Count 5 of the indictment.

The Court: Thank you.

Mr. Plummer: I have no further questions of this witness, your Honor.

The Court: You may cross-examine, Mr. Nesbett. I'd [157] like to suggest to counsel that we have a stipulation from counsel that as exhibits are admitted they may be read in whole or in part at that time and/or counsel may reserve the right to read or refer to these exhibits at a later time in whole or in part or in use in argument to the jury only.

Mr. Plummer: That would be satisfactory with the prosecution, your Honor.

Mr. Nesbett: That is agreeable to the defendant Smith.

The Court: Mr. Hepp:

Mr. Kay: Yes, I will stipulate.

The Court: Mr. Hepp.

Mr. Hepp: Yes.

The Court: Very well. That will be the order. You may proceed, Mr. Nesbett.

HELEN BURNETT

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. Mrs. Burnett, did you cash a number of payroll checks in the Club Bar over that particular week end? A. Yes, I did.

(Testimony of Helen Burnett.)

Q. Do you know approximately how many you cashed?

A. No, at this time I wouldn't have any idea. [158]

Q. You do cash quite a number of those payroll checks there, do you not? A. Yes.

Q. For construction people, railroad people?

A. Yes, sir.

Q. You have a set routine that you go through in checking identification cards against the signature, do you not? A. Yes, sir.

Q. Did the card that was exhibited to you contain a signature of the person named Wendell Ware? A. It did.

Q. It had his signature right on the card, did it?

A. Yes, sir.

Q. And did you observe that signature?

A. I compared it with the signature on the check, sir.

Q. And you must have been satisfied with the resemblance or you wouldn't have taken the check?

A. Yes, sir, I was. The picture and signature were identical.

Q. Do you recall now about what time of the day this person came to your place?

A. I would say it was approximately 4:30 to 5:00 o'clock in the afternoon.

Q. Of a Saturday? A. Yes, sir.

Q. And did he order his whiskey and beer before he asked to [159] cash the check or afterwards?

(Testimony of Helen Burnett.)

A. No, he asked me first if I would cash the check.

Q. Then you must have been standing in front of the establishment?

A. I was standing at the cigar counter by the safe.

Q. Was there a bartender on duty also?

A. Yes, there was a bartender farther on down the bar.

Q. There were a number of payroll checks presented that week end, were there not?

A. Yes.

Q. Quite a number?

A. Yes, on holiday week ends there usually is.

Q. Did you observe this person sign the check himself?

A. Yes, I did. I stood in front of him and waited for him to sign it so I could compare the signature.

Q. Did you observe how he signed it or any peculiarities about his signature or the method used to sign it? Was he right-handed or left-handed?

A. I believe he was right-handed, sir.

Q. I see. And was he standing just across the counter from you? A. Yes, he was.

Q. And did he use your pen or did he have a pen of his own? A. He used my pen.

Q. How was he dressed? [160]

A. He was dressed in working clothes with a hard hat.

Q. With a hard hat? A. Yes.

Q. Do you recall the kind of clothes he had on?

(Testimony of Helen Burnett.)

A. He had on the usual construction men's clothes. Heavy duty type clothes, you would say.

Q. Well, woolen plaid shirt, say?

A. I believe he had on a sweat shirt, sir.

Q. Sweat shirt? A. I think it was.

Q. And what is a hard hat? You mean a helmet, construction——

A. Yes, the type that many of them are required to wear.

Q. You observed this man pretty closely, didn't you?

A. I observe most of my customers that way.

Q. Do you remember them all that well?

A. Not all of them. Specific instances remind you of specific people.

Q. You happened to remember this particular instance very well? A. Yes, sir.

Q. Well, Mrs. Burnett, you were over in the courtroom yesterday, weren't you?

A. Yes, sir, I was.

Q. And Mr. Plummer asked you to come over, did he not, or someone in his office? [161]

A. Yes, sir.

Q. You were subpoenaed in this case?

A. Yes, I was.

Q. Were you told to look for Mr. Smith or Mr. William—Wendell Ware?

A. I was told that he should be in the courtroom.

Q. You were told he should be in the courtroom?

A. Yes, sir.

Q. Is that all you were told? A. Yes, sir.

(Testimony of Helen Burnett.)

Q. Is that all?

A. Well, I was told what proceedings would take place, that I would be put on the witness stand and asked questions.

Q. You were just told that Smith or Wendell Ware would be in the courtroom, is that all?

A. Yes, and that I would be asked to identify him.

Q. You would be asked to identify him?

A. Yes, sir.

Q. And were you asked if you thought you would be able to identify him? A. Yes, I was.

Q. And were you? What did you say?

A. I told them I thought that I could. I identified him in a police line-up sometime ago.

A. They did go ahead, however, and tell you exactly where [162] he would be sitting, didn't they?

A. Not that I recall, no, sir.

Q. Not that you recall? A. No, sir.

Q. Don't you want to tell the Court and jury everything in that respect? Answer my question fairly now. Did they tell you where he would be sitting?

A. No. They told me that he would be sitting in the courtroom as a spectator.

Q. Did they tell you where he would be sitting?

A. No. They moved several times while I was there, sir.

Q. Who moved?

A. Well, there was a recess of the court.

Q. Now, to get back to my question, Mrs. Bur-

(Testimony of Helen Burnett.)

nett. Didn't they tell you just where Mr. Smith would be sitting when you were over there?

A. Not exactly, no. They told me he would be in the courtroom.

Q. I see. Well, not exactly, but did they tell you approximately where he would be sitting?

A. I believe they told me he would be sitting on the same side as the counsel were sitting.

Q. And you believe they told you that. Well, they did tell you that, didn't they?

A. They told me he would be in the courtroom probably on the [163] side of the counsels.

Q. And didn't they show you a diagram, rough layout of the courtroom——

A. No, I asked——

Q. Pardon me. (Continuing): ——at approximately where the counsel and the parties would be sitting?

A. Before I went up I asked them how the court was situated in the Elks Hall because I am aware or acquainted with the building and they explained to me how the deal was set out.

Q. Well, how did they happen to mention to you that Smith would be sitting in there behind counsel?

A. I wouldn't know, sir, how those things are brought up.

Q. Well, you must have asked where he would be sitting?

A. I asked them the layout of the court and they explained to me he would be there or possibly behind counsel's table.

(Testimony of Helen Burnett.)

Q. That was in response to your request and they gave you the information that you wanted, didn't they? A. Yes, sir.

Q. As a matter of fact, Mrs. Burnett—rather, I will ask you this: Did Mr. Plummer give you that information in his office as to the layout in the courtroom? A. No, he did not.

Q. Was it Mr. Duggar? Do you know him by name?

A. I don't believe I saw Mr. Duggar yesterday.

Q. Was it Sgt. Laird here? [164]

A. No, it wasn't.

Q. Someone in Mr. Plummer's—

A. It was one of the boys that were instructed to tell me where to go and what time. I believe his name is Anderson, isn't it?

Q. Mr. Anderson?

A. I believe that is his name, yes.

Q. Now, after you arrived in the courtroom yesterday—that was yesterday morning, wasn't it?

A. No, that was yesterday afternoon.

Q. And about what time did you arrive there? Right at 2:00 o'clock when the court—

A. I arrived just as you were picking the final alternate witness.

Q. Did you have occasion to confer with Mr. Anderson there in the courtroom or Sgt. Laird?

A. I don't remember. I think it was over in Mr. Plummer's office.

Q. Well, I am speaking now of the courtroom after you came there shortly after 2:00?

(Testimony of Helen Burnett.)

A. No, I conferred with no one there.

Q. Did anyone of Mr. Plummer's staff or his assistants point out to you then at that time where Mr. Smith was sitting?

A. No, they did not. [165]

Q. You had only the instructions that were given you in the office as to where he would be sitting?

A. Yes, sir.

Q. Did they tell you how he would be dressed?

A. No, I don't recall that they did.

Q. Well——

A. They asked me if I was sure I could identify him and I said yes. He has a very distinctive face.

Q. I didn't ask you that. I asked you if—didn't you have some doubt? Didn't you ask a question that would cause them to say, "He is going to be sitting right behind counsel"?

Mr. Plummer: I object to the question as having been asked and answered at least four times in the cross-examination.

The Court: Well, this is cross-examination. The Court must afford counsel reasonable latitude. I will permit counsel to ask this once more. You may proceed.

Mr. Nesbett: Thank you, your Honor.

Q. (By Mr. Nesbett): Didn't you ask the question of Mr. Plummer or his assistants that would cause them to take the trouble to explain to you the courtroom layout in the Elks Club and where Smith would be sitting?

A. Yes, sir, to the extent that I have told you.

(Testimony of Helen Burnett.)

I asked them [166] how the courtroom was layed out and where I would have to go and they in turn explained to me where the counsel's tables were and how the seating was and that Smith would undoubtedly be sitting behind counsel's table.

Q. Your main question was only what is the courtroom layout and they took the trouble to explain to you exactly where Smith would be sitting, is that right?

A. No, they didn't tell me exactly where Smith would be sitting.

Q. They told you he would be sitting behind counsel, however, is that right? A. Yes, sir.

Q. Now, didn't you talk with Sgt. Laird or someone in that courtroom after you got there after 2:00 o'clock yesterday and before the witnesses were asked to leave concerning Mr. Smith's location?

A. No, I did not.

Q. You talked with the other witnesses who were with you about it?

A. I came in alone, sir.

Q. But you were sitting with the other witnesses? A. No, sir, I was sitting alone.

Q. Didn't you talk——

A. Until my husband came in.

Q. Did you talk to Mr. Barton when you were in there? [167]

A. I talked with Mr. Barton out in the ante-room after we were excluded from the courtroom.

Q. And you both checked on who Smith would be at that time, didn't you?

(Testimony of Helen Burnett.)

A. Yes, at that time.

Q. You didn't—

A. We had already been excluded from the courtroom.

Q. Did you take any other of these M-K checks over that week end? A. Yes, sir, one more.

Q. One other one? A. Yes, sir.

Mr. Nesbett: I believe that is all, your Honor.

Mr. Hepp: I have no questions.

The Court: Mr. Kay.

HELEN BURNETT

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mrs. Burnett, you are pretty sure about the time? It was late in the afternoon on Saturday?

A. Yes, it was.

Q. Wouldn't have been any earlier than 4:00 o'clock Saturday afternoon? [168]

A. I don't believe it would have been any earlier probably than 3:30 because I don't usually start working until that time on Saturday afternoon.

Q. No earlier than 3:30 Saturday afternoon?

A. Yes, sir.

Mr. Kay: Thank you.

The Court: Any redirect?

Mr. Plummer: Just one question.

HELEN BURNETT

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. Mrs. Burnett, is there any doubt in your mind that this is the gentleman that passed the check in your establishment on that date?

Mr. Kay: Object as leading, suggestive, highly improper.

The Court: Objection overruled.

Mr. Plummer: Would you read back the answer. I thought I heard you answer. Would you answer the question?

A. There is no doubt in my mind. That is the gentleman.

Mr. Plummer: Thank you. I have no further questions.

The Court: Any recross? If not, then you may step down. Thanks for coming. You may be excused. [169]

(Thereupon, the witness was excused and left the stand.)

The Court: What is the pleasure of counsel? An hour again. Very well, counsel desire a recess. The court will go into recess for a period of 10 minutes.

(Thereupon, at 4:17 o'clock p.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors

are back and present in the box. You may call your next witness.

Mr. Plummer: There are no Government witnesses in the courtroom, are there? (No response.) I ask the bailiff to call Mr. Charles Knuth.

CHARLES KNUTH,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Charles Knuth, K-n-u-t-h.

Q. And would you state your occupation or employment over Labor Day of 1956, sir?

A. Well, I am the owner, operator of Ducale Enterprises. We also have a gift shop that at that time was known as the [170] Hanover Gift Shop.

Q. And you were in direct charge of the Hanover Gift Shop, is that right, as part of your enterprises? A. Correct.

Mr. Plummer: May the record reflect I am having this marked for identification as Plaintiff's Exhibit No. 12 after which I will hand it to counsel.

(Thereupon, the document was handed to defense counsel and thereafter returned to Mr. Plummer.)

Mr. Plummer: May I approach the witness, your Honor?

(Testimony of Charles Knuth.)

The Court: You may.

Q. (By Mr. Plummer): I ask you this, sir: I hand you this document which has been marked for identification only as Plaintiff's Exhibit No. 12 and ask you if you will look at it and tell me what it is, if you know?

A. Well, this is a check that I cashed on or about September first by a man known as—or man that gave me identification as Thomas A. Brown.

Q. Will you look at the front of the check, sir, and tell me what kind of a check it is, the serial number on the check, the amount of the check, and the payee, if you will?

A. Well, the check number is No. 9089. It is pay to the order of Thomas A. Brown under Badge No. 7134 for the net amount of \$216.35. [171]

Q. And did this person who purported to be Thomas A. Brown come into your shop and make a purchase? A. That is right, he did.

Q. And after making the purchase did you give him some change from the check?

A. Well, Mr. Brown come in and he expressed a desire to buy a belt buckle. The belt buckle was a gold nugget black diamond with the word Alaska on it. After he selected the merchandise he asked if I would cash a check for him. This is the check that he presented and I asked him for identification. He gave me identification with his picture on it and it appeared to be an M-K identification badge.

Q. And have you since been shown a picture by the police officers of John Walker?

(Testimony of Charles Knuth.)

A. I have.

Q. And is John Walker the same party that cashed that check in your—

A. Yes, he was, and he admitted that he was.

Q. And, sir, I wonder if you will look at the back and see if you endorsed that check and deposited it?

A. Well, as soon as I accepted the check I made a note of it for deposit and my initials are on here.

Q. And was the check honored for payment when it was presented?

A. No, we never have received payment for it. It wasn't honored. [172]

Mr. Plummer: I move the admission of Plaintiff's Exhibit No. 12 for identification only into evidence.

The Court: Is there objection?

Mr. Nesbett: May I ask the witness a question or two, your Honor, concerning the check?

The Court: Yes, you may.

Q. (By Mr. Nesbett): Do you own this store called the Gift Shop? A. I do.

Q. And is this a corporation owning the Gift Shop called Ducale Enterprises?

A. Ducale Enterprises is a corporation which holds various holdings, one of them being the—now called the Safari Gift Shop, at that time known as the Hanover Gift Shop.

Q. Were you behind the counter, so to speak, on the day this check was taken? A. I was.

Q. Where is your shop located?

(Testimony of Charles Knuth.)

A. 235 Fourth Avenue, Anchorage, Alaska.

Q. And are there any other employees on duty there ordinarily?

A. Ordinarily there is my wife and myself and part-time help also, one girl.

Q. Did you take many payroll checks over that Labor Day week end?

A. That particular day there was just that one.

Q. Do you cash many payroll checks in the routine of your [173] business? A. No.

Q. You have talked to Mr. Brown, apparently, haven't you? A. That is right.

Q. Was his name Mr. Brown or Walker?

A. His name was Mr. Brown and Mr. Walker. He apparently had two names.

Q. When did you talk with Mr. Walker?

A. When he identified himself at the Marshal's office.

Q. And how long ago was that?

A. I'd say roughly a year ago.

Q. How long have you been subpoenaed to appear here today?

A. The subpoena that I now have I believe came to me the 10th of this month.

Q. Did you talk with Mr. Plummer concerning this check during the recess just past, in other words, between 4:00 and 4:10?

A. No, I have not.

Q. When did you talk with him last about this check?

(Testimony of Charles Knuth.)

A. I haven't talked to Mr. Plummer about this check at all.

Q. Never? A. No.

Q. Or his assistants, is that right?

A. Yes, Mr. Duggar.

Q. When did that conversation take place?

A. Yesterday afternoon. [174]

Q. Did Mr. Duggar tell you why you were to come here and talk about this check?

A. Well, as near as I understood it he gave everyone, including myself, a briefing of the courtroom in general and procedure.

Q. But about this check in particular, did you talk with Mr. Duggar about that? A. Right.

Mr. Nesbett: Your Honor, I object to the admission of this check on the ground that it is immaterial. It has no relation to any of the defendants, apparently, involved. According to Mr. Plummer's own opening statement the man Brown or Walker, or whoever it was, has entered a plea. I suppose he hasn't been sentenced yet, but it has nothing to do with the trial of this case. I don't know why it's being introduced unless it is to kill time until 5:00 o'clock. Maybe some of Mr. Plummer's other witnesses didn't show up.

Mr. Plummer: We have an abundance of witnesses, your Honor.

The Court: What is the purpose of it?

Mr. Plummer: The reason is, two things, one is to identify the passer which we, of course, said we would do in the opening statement, and the other—

(Testimony of Charles Knuth.)

and this gentleman so far as I know is the only possible man that can do it—is to show he has received no payment from this check.

Mr. Nesbett: Well—— [175]

Mr. Plummer: Indispensable witness, necessary, has to be here for that purpose.

The Court: Well, excepting this though, the defendant has pleaded guilty.

Mr. Plummer: I know.

The Court: So you don't have to prove that.

Mr. Plummer: Well, the check is mentioned in Count 6. There is more than one defendant in Count 6. There is this, defendant Ing, defendant Wright still here. They have not pleaded guilty, in fact they pleaded not guilty. We are trying them right here today.

The Court: Objection overruled. It may be admitted and marked Government's Exhibit No. 12.

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine, Mr. Nesbett.

Mr. Nesbett: May I see the exhibit again.

The Court: While counsel is examining the check would you please tell me which count this refers to, Mr. Plummer?

Mr. Plummer: I am sorry, your Honor. The count involved is Count No. 6.

The Court: Thank you.

Mr. Nesbett: I believe I have no further questions, your Honor.

(Testimony of Charles Knuth.)

The Court: Very well. Mr. Hepp, do you have any questions? [176]

Mr. Hepp: No, I have no questions.

The Court: Mr. Kay.

CHARLES KNUTH

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. What time in the afternoon was it, Mr. Knuth?

A. It was in the evening to the best of my recollection. I'd say possibly about 5:00, 4:00 to 5:00 o'clock. I know it was after the banks closed because I couldn't make verification any other way.

Q. To the best of your recollection it was 4:00 to 5:00 o'clock on Saturday afternoon?

A. Right.

Mr. Kay: No further questions.

The Court: Very well. Any redirect?

Mr. Plummer: No, your Honor.

The Court: Very well. Mr. Knuth, you may step down. You may be excused. Thanks for coming.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: I would ask that Mr. John P. Harris be called. [177]

JOHN P. HARRIS

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. John P. Harris.

Q. Would you tell me what your occupation or employment was on or about Labor Day of 1956?

A. I owned and operated the Anchorage Liquor Store, 424 Fourth Avenue.

Q. Were you the owner and operator of the store on that week end, sir, on Labor Day week end 1956?

A. What did you say?

Q. Were you the owner and operator of the store at that time?

A. Yes, sir.

Q. Were you on duty that day?

A. Yes, sir, up until 4:00 o'clock in the afternoon.

Mr. Hepp: Which day was that? I think you said week end.

Mr. Plummer: Oh.

A. Saturday, September 1, 1956.

Q. (By Mr. Plummer): Saturday, September 1. [178]

Mr. Plummer: May the record reflect that I have had this marked for identification as Plaintiff's Exhibit No. 13 and show it to counsel.

(Testimony of John P. Harris.)

(Thereupon, the document was handed to defense counsel and thereafter returned to Mr. Plummer.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Harris, I hand you what has been marked for identification as Plaintiff's Exhibit No. 13. I will ask you to look at it and tell me what it is, if you know, sir?

A. I cashed this check myself at about, around between 7:15 and 8:30 in the evening of September 1, 1956.

Q. Thank you, sir. Would you look at the check—put on your glasses again and look at the check and read what kind of a check it is, the name of the payee, the serial number?

A. The name is Thomas A. Brown and the amount is \$216.35.

Q. Will you tell us what kind of check it is?

A. Morrison-Knudsen Company.

Q. Would you be good enough, sir, to look at the right hand side and see if there is a serial number?

A. The serial number is 90—and I think it is 0—5.

Q. Thank you. Did you make the sale or did you cash this personally?

A. At the same time a girl was working by the

(Testimony of John P. Harris.)

name of Corine [179] Stevens and I cashed the check. She was selling the whiskey. This fellow bought some champagne and whiskey. I cashed the check and I took it over for the whiskey.

Q. And did Mr. Brown or the party calling himself Mr. Brown receive the change?

A. Yes, and he signed the check in front of me.

Q. Now, have you since that time been shown a picture of a gentleman by the name of Joseph Walker by the police?

A. By who?

Q. By the name of John Walker by the police?

A. Johnny Walker?

Q. Yes, sir.

Mr. Hepp: I object. I believe that calls for hearsay.

Mr. Plummer: No, there is no hearsay.

Mr. Hepp: Shown a picture of somebody, I believe that—

The Court: Well, the objection will be sustained. Counsel, you may rephrase your question. I think it is objectionable under the law.

Q. (By Mr. Plummer): Do you know now the true identity of the party who signed that check in your presence as Thomas A. Brown?

Mr. Hepp: I object to that.

A. Yes.

Mr. Hepp: As leading and suggestive. I think this witness should testify of his own knowledge and not just state [180] yes or no to the District Attorney's offers. There has not been any founda-

(Testimony of John P. Harris.)

tion laid. We have no opportunity to object as to how he could know these things.

The Court: Objection overruled. He may answer that question.

Q. (By Mr. Plummer): Will you answer the question now, sir? A. What is it about?

Mr. Hepp: I believe he answered it.

Mr. Plummer: Would the reporter read back the answer. I think the answer was yes, is that correct? A. Yes.

Q. (By Mr. Plummer): Who is that gentleman?

A. You mean in the courtroom here?

Q. No, he is not in the courtroom here.

Mr. Kay: Permit him to try—

A. Thomas A. Brown.

Mr. Plummer: May I have just a minute, your Honor?

The Court: Yes, you may.

Mr. Plummer: Your Honor, the hour is late. I would request, due to the lateness of the hour—it is apparent we are going to have to have the defendant Thomas A. Brown here so this man can identify him, the party who purported to be Thomas A. Brown here so he can be identified to this witness, if he can, and may [181] we have a continuance until Monday morning to do that?

The Court: But the other aspects you can conclude with at this time. Why don't you do that, counsel, to save time?

Mr. Plummer: Yes, sir. I appreciate that.

(Testimony of John P. Harris.)

Q. (By Mr. Plummer): Now, what did you do with this check after you took it?

A. I kept it until the, let's see, the 4th day of September to go to the bank. I didn't have only one. I had three checks so I took them all to the bank and I cashed them. I cashed those checks.

Q. Then what happened next, if anything?

Mr. Kay: Your Honor, I had no opportunity to anticipate the answer. I object to that portion of the answer relating to any other checks and ask that it be stricken and ask that the witness be confined to this check.

The Court: The motion is granted and would you confine your remarks to this check only.

A. Well, your Honor, I took those checks at the same time to the bank.

The Court: I appreciate that, but under the rules we are limited to certain things which you can testify to. Now, the only thing we are concerned about for the moment is this check, not what you may have done elsewhere.

A. Yes, I kept it.

The Court: Then just testify about this [182] check.

A. Yes, sir.

The Court: Thank you. You may proceed.

Q. (By Mr. Plummer): Would you tell me what you did with this particular check that you have in your hand?

A. I put it in the safe.

Q. And after that what did you do with it?

(Testimony of John P. Harris.)

A. After that I took it to the bank.

Q. And did you again have occasion to see it after you once took it to the bank?

A. Yes.

Q. And would you tell us when that was and why that was?

A. That was I believe—I have got the date here. I think it was the 5th or 4th, I don't remember. I have got the slip from the bank here. "Thomas A. Brown in the——"

Mr. Hepp: Object to his reading from some extraneous matter. I don't think that is responsive to the question. The question is, when did he next see the check. I think he can either answer he did or didn't.

Mr. Plummer: Mr. Hepp, I will be the one that makes the objection if I don't think the question is responsive. It is for the person examining to make the objection and not for some outsider.

The Court: Objection sustained.

Mr. Hepp: I have a right to object if the answer is [183] not responsive to a question, sir.

The Court: Sorry, counsel, I don't agree with you. You have a right to object to its irrelevancy, incompetency or immateriality only. Only the examining counsel has that right. Objection overruled. You may proceed.

Mr. Hepp: I then renew the objection as being irrelevant, incompetent, and immaterial, what he is reading out of his hand.

The Court: Now, would you please explain to

(Testimony of John P. Harris.)

the Court and to the jury and counsel what you have in your hand there?

The Witness: I have four checks cashed by Thomas A. Brown for \$216.35.

The Court: Thank you. Now you may proceed.

Q. (By Mr. Plummer): Have you ever received money for this check that you have in your hand marked Plaintiff's Exhibit No. 13 for identification? Did you ever receive money for that?

A. Receive money?

Q. Yes.

A. The only money I received was from the bank that cashed the check.

Q. Yes. A. That is the only time.

Q. Did anything happen after that?

A. The next thing was this come from the bank. That is what I got left from cashing the check.

Q. Would you tell me—not what that is, but you can refer to [184] it if you want to—but what is it you have in your hand there, sir?

A. You mean from the bank?

Q. Yes.

A. "Reason for return. Described below."

Q. Now, does it refer to this check that you have? A. That is correct, sir.

Q. Would you just read that portion of it?

A. Yes. That is Thomas A. Brown.

Q. And it referred to this same check we are talking about in evidence?

A. Yes, and it is signed by the First National

(Testimony of John P. Harris.)

Bank of Anchorage, Alaska. Morrison-Knudsen Company, Inc.

Mr. Plummer: I have no further questions. I will want to recall this witness, your Honor, Monday morning for the purpose of identification of John Walker. He will be in the courtroom at that time.

The Court: Don't you think, counsel, we could continue at this time, go a little farther on cross-examination, rather than have to recall the man back?

Mr. Hepp: I believe we would prefer that the direct examination be concluded before cross-examination be undertaken.

The Court: Do other counsel join in that?

Mr. Kay: Yes, your Honor.

The Court: Very well. That will be the order. Ladies [185] and gentlemen of the jury: The trial of this case will be continued until next Monday morning at the hour of 10:00 a.m. It will be reconvened in the main courtroom.

As you know, I must instruct you not to discuss this case among yourselves nor are you permitted to let others discuss it with you.

Does the clerk have anything else on her desk at this time?

Deputy Clerk: No, your Honor.

The Court: This court will stand adjourned until tomorrow morning at the hour of 10:00 a.m.

(Thereupon, at 4:45 o'clock p.m., February 20, 1958, court was adjourned to the next morn-

(Testimony of John P. Harris.)

The Court: You may.

Mr. Plummer: I introduce this into evidence. I think counsel have seen it before. I will show it to them again.

The Court: Is there any objection?

Mr. Plummer: May the record likewise reflect, if we have not done so, that this is the check involved in Count 7 of the indictment.

The Court: Thank you. Without objection then it may be admitted and marked Government's Exhibit No. 13.

Mr. Plummer: May I have just a minute, your Honor.

The Court: You may. I point out to the jurors it is a pleasure to be back in the main courtroom after having been so many places.

Mr. Plummer: May I have Exhibit No. 7. May I once more approach the witness, your Honor.

The Court: You may.

Q. (By Mr. Plummer): Would you look at that, Mr. Harris, and tell me what it is, if you know?

A. This is a check cashed by James C. Wood. This is Morrison-Knudsen [191] Company, Inc., General Contractors, Boise, Idaho, pay check No. 90-6 and the amount is \$219.46. It's signed by James C. Woods. Signed over by me, Anchorage Liquor Store, John P. Harris.

Q. Did the man endorse that in your presence?

A. Yes, sir, the old—was three people that cashed

(Testimony of John P. Harris.)

those checks. They showed me identification card with a picture and the name on the I.D. card.

Q. Now, have you received any money for that check? A. No, sir.

Q. I wonder if you will look around the court-room, if you would, and see if you can identify the man that endorsed that check in your presence on that occasion?

A. The man James C. Woods is the man to the right on this side. That is the man there.

Q. Is this the gentleman?

A. Right there, yes, sir.

Mr. Plummer: May the record reflect that I am pointing to Mr. Dewey Taylor. Thank you. May the record also reflect that this is the check involved in Count 18 of the indictment.

The Court: Exhibit No. 7.

Mr. Plummer: May I approach the witness, your Honor.

The Court: You may.

Q. (By Mr. Plummer): I hand you a check, sir, and ask you if you can tell me [192] what it is, if you know?

A. This is a check from Morrison-Knudsen Company, Inc., General Contractors, Boise, Idaho, Pay Check No. 8927. The amount is \$217.87 and signed by Theodore Williams, 410 8th Avenue, undersigned by me, Anchorage Liquor Store, John D. Harris.

Q. Did you cash that check?

A. I cashed all those checks myself.

Q. Was it endorsed in your presence?

(Testimony of John P. Harris.)

A. Yes, sir.

Q. Have you ever received any money for it?

A. No, sir.

Q. I ask you, sir, to look around the courtroom and ask you if you see the gentleman that cashed that check?

A. He is the man in the middle of those two, Thomas and Woods. That is with him. Known to me as Theodore Williams.

Mr. Plummer: May the record reflect that I am pointing to Mr. Lemuel Ashley Williams and asking the witness if this is the party that cashed that check on that date?

A. Yes, sir.

Mr. Plummer: I offer this check in evidence. I will show it to counsel. May the record further reflect that this is the check involved in Count 19 of the indictment.

The Court: Very well.

Mr. Plummer: I notice, your Honor, that the defendant Charles E. Smith is sitting in the back of the courtroom, rather [193] than up here. I guess that's permissible if he cares to sit there.

The Court: Yes, as long as he is present in the courtroom. That is proper. Is there objection, counsel?

Mr. Gore: No.

The Court: Without objection then it may be admitted and marked Government's Exhibit No. 14.

Mr. Plummer: I may have asked this witness this question before and if the Court will advise me

(Testimony of John P. Harris.)

I will be glad to strike it, but have you ever been paid for this check? A. No, sir.

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine then.

Mr. Hepp: I don't believe we have any questions, your Honor.

The Court: Mr. Kay?

Mr. Kay: I have no questions of Mr. Harris, your Honor.

The Court: Very well. Mr. Nesbett?

Mr. Nesbett: No questions.

The Court: Very well. Mr. Harris, you may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness then.

Mr. Plummer: May I call George Wilmoth. Thank you, Mr. Harris. [194]

The Court: May this witness be excused?

Mr. Plummer: As far as the Government is concerned he may be, your Honor.

The Court: Without objection you may be excused then.

GEORGE C. WILMOTH,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, Mr. Plummer.

Mr. Plummer: Thank you.

By Mr. Plummer:

Q. Will you state your name, sir?

A. George C. Wilmoth, W-i-l-m-o-t-h.

Q. And your occupation, sir?

A. Salesman.

Q. And for whom?

A. I am self-employed.

Q. What is the name of your establishment, sir?

A. Well, at—I was with Hank's Hardware.

Q. And were you so employed on the Labor Day week end in 1956? A. Yes, sir.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may. [195]

Q. (By Mr. Plummer): I hand you, sir, an object and ask you if you know what it is?

Mr. Hepp: May it please the Court, I think the prosecution is deviating from the usual practice of serving these articles or items or objects marked for identification and showing them to counsel before any questions are put.

Mr. Plummer: I am doing that on purpose, your Honor, because notwithstanding Mr. Hepp's supposed experience to the contrary, I find that there

(Testimony of George C. Wilmoth.)

is no basis in law, in fact the law is otherwise, that the only time counsel needs to show an object to counsel for inspection is once it has been identified by the witness and there's no, absolutely no basis in law for any other procedure. I submitted it to you the other day because I thought it would speed up the procedure and for that reason I was willing to go along, but I find out it hasn't and I see no reason to deviate from the proper policy at this time.

The Court: Well, since we have an adopted policy during this trial I don't wish it to be any precedent. I concede your wishes to be procedural. I think we should abide by the ruling heretofore made.

Mr. Plummer: May I approach the witness?

The Court: You may do so.

Mr. Plummer: I will have it marked for identification.

The Court: Then, so there won't be any question, that will be marked identification No. 15. As of now I have not [196] received any instructions. Under the rules, and all counsel have been advised, I should receive instructions at the conclusion of the first day of trial. What am I to expect by way of instructions?

Mr. Kay: I have some prepared, your Honor. I thought that possibly in view of the length of the anticipated trial that it would be necessary, but I have them ready. I will submit them.

The Court: I wish you would and then, of

(Testimony of George C. Wilmoth.)

course, as heretofore followed, you would have the right to submit additional instructions.

Mr. Kay: Yes, your Honor.

The Court: Mr. Hepp, are you going to submit instructions to the Court?

Mr. Hepp: Well, I hadn't any idea of the Government's case, your Honor, and I have no way of—to anticipate or prepare and get instructions up. I was unacquainted with this rule and——

The Court: That is why I am calling it to your attention.

Mr. Hepp: Well, I am unable—I have no way of knowing what evidence Mr. Plummer is going to present. I don't know what questions of law are going to be involved in which I would desire the Court to instruct the jury so I am unable to present any at the present time.

The Court: Well, of course, I rather expected that you would anticipate the usual and if you had anything that you desired to be out of the ordinary based upon what you might expect the [197] evidence to be, that you would call that to my attention so I'd have a chance to research it before the last minute.

Mr. Hepp: Well, perhaps the Court would inform me, does the Court give what might be considered the garden variety of instructions of any case as a matter of course?

The Court: Yes, and I thought maybe you might have something in mind special in this case because of your knowledge of the law.

(Testimony of George C. Wilmoth.)

Mr. Hepp: The only instruction that I would have would deal directly and specifically with what might be considered a point of law peculiar to the case that the Government presents. As far as the usual run of instructions, I am quite willing to rely upon the Court.

The Court: Very well.

Mr. Plummer: I have only one that I am planning to submit. It's being typed this morning and I should have it available to give to the Court before this noon.

The Court: I rather anticipate that the Government will be through with their evidence this morning.

Mr. Plummer: I would think a more accurate estimate would be possibly tomorrow evening.

The Court: Thank you. Did you have a point, Mr. Nesbett?

Mr. Nesbett: I want to mention, your Honor, that I am in the same position, although I am aware of the rule. I just can't anticipate outside the usual instructions what I might [198] desire to submit.

The Court: Well, the Court will be understanding, and, on the other hand, I ask counsel to cooperate with the Court so I will have a chance to research your proposed instructions and check it with the law before the last minute because if it's given to me at the last minute then I don't have that opportunity. Thank you. You may proceed.

Mr. Plummer: I would like to advise the Court that nobody except Mr. Kay to date has availed

(Testimony of George C. Wilmoth.)

himself of an opportunity to make an opening statement and there may be something from that that would cause me to have a different attitude on my instructions.

The Court: Very well. Now, that has been shown to counsel, has it not?

Mr. Plummer: This Plaintiff's Exhibit No. 15 has been. I am now showing another check.

The Court: I see.

Mr. Plummer: And I ask that it be marked for identification.

The Court: It may be marked as Plaintiff's Exhibit No. 16 for identification only.

Mr. Plummer: I will show it to counsel, your Honor.

The Court: Very well.

Mr. Plummer: Your Honor, Mr. Kay has brought up a point that I want to call to the Court's attention at this time, is that the three gentlemen sitting behind Mr. Gore and Mr. Ing are [199] witnesses or are potential witnesses in the case.

Mr. Kay: One has already testified.

Mr. Plummer: Yes, and Mr. Taylor has testified. It's necessary because of objection made to the hearsay testimony on the identification for mugshots on Thursday afternoon, to have them present here in the courtroom this morning. As soon as the identification procedures have been outlined they will be removed from the courtroom.

Mr. Kay: That is satisfactory. All I wanted to

(Testimony of George C. Wilmoth.)

point out is that they shouldn't be allowed to sit during other testimony.

The Court: Thank you for calling that to the Court's attention.

Mr. Plummer: And I assure the Court they will be removed as soon as the identification procedures have been completed.

The Court: Very well.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Wilmoth, I hand you Plaintiff's Exhibit No. 16 for identification and ask you what it is, if you know?

A. Well, it's a very good replica of a Morrison-Knudsen payroll check.

Q. Have you ever seen that check before?

A. Yes. [200]

Q. Where did you see it?

A. In Hank's Hardware.

Q. Did you take that check or cause that check to be cashed over the Labor Day week-end in 1956?

A. No, sir.

Q. Do you know who did? A. Yes.

Q. Will you tell us who did?

A. It was Mrs. Wilma Jones.

Q. And was it done in your presence?

A. I was in the store. I wouldn't testify to the fact that I was standing there and—well, I saw the check given, yes, but I wouldn't say I saw any money change hands.

(Testimony of George C. Wilmoth.)

Q. Yes, sir. Did you see the man who gave the check?
A. Yes.

Q. And is he present here in this courtroom?

A. He is.

Q. And would you point him out, if you can?

A. This fellow right over here.

The Court: Refer specifically.

A. Number three there in the——

Q. (By Mr. Plummer): Would this be the man with the plaid jacket on?
A. Yes.

Mr. Plummer: Let the record reflect that I am pointing [201] to John Walker.

A. Yes, sir.

Q. Do you know whether or not Hank's Hardware has ever received any money for that check?

Mr. Hepp: I object to that as calling for possible hearsay. There has been no foundation laid that this man would know the answer to that question. He may have heard but we believe that is objectionable.

The Court: Answer only if you know, not if you have heard.

A. I have not heard. I do not know.

Mr. Plummer: May I approach the witness, your Honor?

The Court: Yes.

Mr. Plummer: I offer this into evidence.

The Court: Any objection, counsel?

Mr. Hepp: No.

The Court: Without objection then it may be admitted as Government's Exhibit No. 16.

(Testimony of George C. Wilmoth.)

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine then.

Mr. Nesbett: No cross-examination, your Honor, apparently.

The Court: Very well. Mr. Wilmoth, you may step down. May this witness be excused?

Mr. Plummer: Yes, your Honor. [202]

The Court: Without objection then that will be the order. Thanks for coming.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness, Mr. Plummer.

Mr. Plummer: I ask that Malue Rewak be called.

MALUE REWAK

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: Just a moment, please. Mrs. Rewak, will you please remove your coat. Mr. Johnson, I instruct you not to permit any witness to come in that does not have his coat off, please.

By Mr. Plummer:

Q. Will you please state your name?

A. Malue Rewak.

Q. And your occupation?

(Testimony of Malue Rewak.)

A. We have Tom's Radio.

Q. And did you have it during the Labor Day week end in 1956? A. Yes.

Mr. Plummer: I will advise counsel this has already been marked for identification as Plaintiff's Exhibit No. 15 and did you have a chance to inspect it at that time?

Mr. Hepp: Yes. [203]

Mr. Plummer: May I approach the witness?

The Court: You may.

Q. Mrs. Rewak, I hand you an object and ask you if you know what it is?

A. Yes, it's the check that was given to me, you know, on this—I think it was Saturday night.

Q. And would you look at the check and see who the payee is and tell us what kind of a check it is and the check number, if you will?

A. Yes. It's a Morrison-Knudsen check and the number of it is 9073 and down here, as if it was signed by someone from Morrison-Knudsen, it says Guy M. King.

Q. And the payee? A. Thomas A. Brown.

Q. Was this check given to you? A. Yes.

Q. And will you look around the courtroom, Mrs. Rewak, and see if you can see the party that did as a matter of fact cash that check at your place?

A. Yes, in that second row he is the third from the end.

Q. Would that be this gentleman sitting right here? A. Yes.

(Testimony of Malue Rewak.)

Mr. Plummer: May the record reflect that when I asked the question I was pointing to Mr. John Walker.

Q. Now, have you ever received any money for that check? [204] A. No.

Mr. Plummer: May I approach the witness again?

The Court: You may.

Mr. Plummer: The Government offers this in evidence at this time.

The Court: Is there any objection? It may be admitted and then marked Government's Exhibit No. 15.

Mr. Plummer: May the record reflect, your Honor, that this is the check mentioned in Count 9 of the indictment?

The Court: Very well, and how about Exhibit No. 16, counsel?

Mr. Plummer: That is the preceding check.

The Court: It's the preceding check testified to, but succeeding as to the exhibit identification.

Mr. Plummer: May the record reflect, your Honor, that that is the check mentioned in Count 8 of the indictment.

The Court: Thank you.

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine.

Mr. Hepp: No questions.

Mr. Nesbett: I have no cross-examination, your Honor.

(Testimony of Malue Rewak.)

The Court: Thank you. You may be excused, Mrs. Rewak. Thanks for coming.

A. You bet. [205]

The Court: May this witness be excused?

Mr. Plummer: Yes, your Honor.

The Court: Very well, you may be excused permanently.

(Thereupon, the witness was excused and left the stand.)

The Court: Another witness may be called.

Mr. Plummer: Before this witness leaves—Mrs. Rewak, will you stay for just a minute and let this—no, this was in Count 9 of the indictment. Now, actually the last check that was—no, I am fine. May Mr. Roy Johnson be called.

ROY B. JOHNSON, JR.

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Roy B. Johnson, Jr.

Q. And would you be good enough, sir, to tell us what your occupation was and who you were employed by over the Labor Day week-end in 1956?

A. I was working at Stratton's Gateway Service Station in Mountain View.

The Court: Pardon me. How do you spell your

(Testimony of Roy B. Johnson, Jr.)

name? S-o-n? A. Yes. [206]

Mr. Plummer: May this be marked for identification.

The Court: It may be marked as Exhibit No. 17 for identification.

Mr. Plummer: May the record reflect that I am showing this to counsel.

The Court: Very well.

Mr. Plummer: May I again approach the witness?

The Court: You may.

Q. (By Mr. Plummer): Mr. Johnson, I hand you what has been marked for identification only as Plaintiff's Exhibit No. 17 and ask you if you will tell me what it is, if you know?

A. That's the check that I cashed on Sunday before Labor Day. The man brought it in and bought an inner tube and I gave him the difference between the price of the inner tube and the check.

Q. And did you also give him the inner tube?

A. Yes, he got the inner tube, too.

Q. And I will ask you, sir, if you will look around the courtroom and tell me if you see that man here in the courtroom today?

A. Yes, he is here.

Q. Would you point him out to me, sir?

A. He is right over there in the gray checked shirt.

Q. Is this the gentleman?

A. Yes, it is. [207]

Mr. Plummer: May the record reflect that when

(Testimony of Roy B. Johnson, Jr.)

I asked the witness the question I was pointing to John Walker.

Q. Would you be good enough, sir, to look at the front of the check and tell me what kind of a check it is and the serial number of the check and the name of the payee?

A. It's a Morrison-Knudsen payroll check, serial number is 9015 and the payee is Thomas A. Brown.

Q. And did John Walker endorse that in your presence as Thomas A. Brown?

A. I don't remember if he endorsed it in my presence or if it was already endorsed.

Q. John Walker is the man who cashed the check? A. Yes, he is.

Q. Do you know whether or not your firm has received money for that check?

A. No, I don't.

Mr. Hepp: I object to that. I don't know there is any showing that this witness——

The Court: Only if he knows.

Mr. Plummer: I think he has already answered he doesn't know, your Honor.

The Court: All right. Very well.

Mr. Plummer: I offer this in evidence at this time.

The Court: Any objection? Without objection it may be admitted then as Government's Exhibit No. 17. [208]

Mr. Plummer: May the record reflect, your Honor, that this is the check mentioned in Count 10 of the indictment.

(Testimony of Roy B. Johnson, Jr.)

The Court: Very well.

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine.

Mr. Kay: I have just a question, your Honor.

ROY B. JOHNSON, JR.

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. You are Robert W. Stratton, Jr., aren't you?

A. No, I am not.

Q. I am sorry. I thought when you came in you identified yourself as Robert W. Stratton, Jr.

The Court: No, Roy B. Johnson.

Mr. Kay: I am sorry.

Q. You are not the owner of Stratton's Gateway Service? A. No.

The Court: Any other cross? Very well. You may step down, Mr. Johnson. May this witness be excused?

Mr. Plummer: As far as the Government is concerned he may be.

The Court: Without objection you may be permanently [209] excused. Thanks for coming, Mr. Johnson.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: I ask that Jeanne Beth be called.

JEANNE BETH

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name?

A. Jeanne Beth.

Q. J-e-a-n-n-e and the Beth is B-e-t-h, is that correct? A. Yes.

Q. Would you tell us what your employment was over the Labor Day week-end in 1956?

A. I was employed as combination secretary-clerk of McKay's Hardware.

Q. I wonder, Miss Beth, if you would move the microphone closer to you and talk into the microphone and would you repeat your last answer, please?

A. I was employed at McKay's Hardware as combination secretary and clerk.

Q. And were you on duty over that Labor Day week-end in the store? [210]

A. I was, yes.

Mr. Plummer: Will you mark this for identification.

The Court: That's number 19.

Mr. Plummer: May the record reflect I am showing it to counsel.

The Court: You may do so.

(Testimony of Jeanne Beth.)

Deputy Clerk: I mismarked it. It should be 18.

The Court: Well, let the record now stand as it is and mark it 17. Would that be proper?

Deputy Clerk: No, it's 18.

The Court: Have we used 17? I don't have it.

Mr. Kay: Roy B. Johnson identified that.

The Court: I am sorry, that was Number 18 I think.

Mr. Plummer: If we could get the check.

The Court: Well, he has 17 right here. I am in error.

Mr. Plummer: Yes, this was 17, your Honor.

The Court: I am in error. Very well, then this one may be marked as Number 18 for identification.

Mr. Plummer: May the record show that I am giving it back to the Clerk or in-court Deputy for correction and it is now being marked Plaintiff's Exhibit No. 18 for identification only.

The Court: Very well.

Mr. Plummer: Does anybody want to look at it further over here? [211]

Mr. Gore: No.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Miss Beth, I hand you an object which has been marked for identification only as Plaintiff's Exhibit No. 18 and ask you to look at it and tell me what it is, if you know?

(Testimony of Jeanne Beth.)

A. It looks like a Morrison-Knudsen payroll check.

Q. And do you see a serial number on there?

A. Yes, number 9057.

Q. And do you see the name of the payee from the face of the check? A. Thomas A. Brown.

Q. I wonder if you would be good enough to look at the rear of the check. Does it bear an endorsement on it? A. Thomas A. Brown.

Q. And I wonder if you would be good enough—first, was that endorsement made in your presence?

A. Yes, it was.

Q. I wonder if you would be good enough to look around the courtroom and tell me, if you can, or if you see the gentleman that made the endorsement on that day?

A. The gentleman in the plaid shirt sitting over there.

Q. Would that be this gentleman?

A. That is correct [212]

Mr. Plummer: May the record reflect that when I asked the question I was pointing to Mr. John Walker.

Q. Do you know, and I will ask you to reply only if you know from your own knowledge, if the firm for which you were working received any money for this check?

A. Not to my knowledge, no.

Mr. Plummer: May I approach the witness, your Honor?

(Testimony of Jeanne Beth.)

The Court: You may. I now introduce this into evidence as Plaintiff's Exhibit No. 18.

The Court: Is there any objection? Hearing none it may be admitted.

Mr. Plummer: May the record reflect, your Honor, that Plaintiff's Exhibit 18 is the check which is mentioned in Count 11 of the indictment.

The Court: Thank you.

Mr. Plummer: I have no further questions of this witness.

The Court: Is there any cross-examination?

Mr. Kay: Just a question or two, your Honor.

JEANNE BETH

testifies as follows on:

Cross-Examination

By Mr. Kay:

Q. Miss Beth, do you know when on the weekend that check was [213] cashed, Saturday, Sunday, when?

A. No, I can't state exactly what date it was cashed, no.

Q. The store was open on Sunday?

A. We were open on Sunday always and Labor Day also.

Q. You replied in response to a question by Mr. Plummer that you didn't know or that no money had been received on this check to your knowledge?

A. That is correct.

Q. Would you know or would someone else in

(Testimony of Jeanne Beth.)

the store be more in a position to know? Do you make the deposits, in other words?

A. I make the deposits, yes, although I couldn't say whether anyone else had been approached. He asked me if I know of anyone that had and I told him no because I don't know of any.

Q. You just don't know whether any money was received for the check?

A. That is correct.

Q. When asked to identify Mr.—did anyone point out to you prior to coming into the courtroom where Mr. Walker would probably be sitting?

A. No, only that Mr. Walker would be in the courtroom.

Q. Didn't mention that he would have a plaid shirt on or be sitting over on this side?

A. No, definitely not. [214]

Q. You just happened to be—look right over here?

A. Yes, I did.

Mr. Kay: That's all.

The Court: Any redirect?

Mr. Plummer: Yes.

JEANNE BETH

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. Would you tell us, Miss Beth, the circumstances of which the check was cashed?

A. He came into our store and I happened to be

(Testimony of Jeanne Beth.)

the one that waited on him and he bought a reel, a spinning reel, in our store and cashed the check and as I personally know quite a few Morrison-Knudsen men I glanced up at him to see if I could acknowledge who he was and I remember commenting to the fact, "You work for Morrison-Knudsen also? I know quite a few people who do." That is how come I remember him distinctly because I did know so many Morrison-Knudsen boys.

Q. There is no doubt in your mind that this is the gentleman? A. No doubt whatsoever.

Mr. Plummer: Fine. I have no further questions.

The Court: Any recross?

Mr. Kay: No. [215]

The Court: Very well. You may step down.

Mr. Plummer: Did I advise the court that this was the check mentioned in Count 11 of the indictment?

The Court: Yes, you did. Thank you. May this witness be excused without objection.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: May William Gordon be called, your Honor.

WILLIAM GORDON

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Would you please state your name, sir?

A. William J. Gordon.

Q. And what is your occupation?

A. Accounting in the Railroad.

Q. And did you formerly have a part time job?

A. Yes.

Q. And did you have this part time job over the Labor Day week-end in 1956? A. I did.

Q. Would you be good enough, sir, to tell us what that job was?

A. Working in the liquor store, clerk. [216]

Q. And at what liquor store? A. Davis.

Q. Davis Liquor Store? A. Yes.

Mr. Plummer: May I have Plaintiff's Exhibit No. 2. It's already been introduced. May I approach the witness?

The Court: You may.

Q. (By Mr. Plummer): I hand you what has been marked as Plaintiff's Exhibit No. 2 and ask you what it is, if you know?

A. It's the check I accepted on that date.

Q. Over the Labor Day week-end in 1956?

A. That is correct.

Q. I wonder if you will look around the court-

(Testimony of William Gordon.)

room and tell me, if you know, if this party that you took it from is in the courtroom at this time?

A. No, I don't see him.

Mr. Plummer: Very good, sir. I have no further questions of this witness.

The Court: Any cross? Very well. You may step down, Mr. Gordon. You may be excused. Thanks for coming—without objection.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: May I call Darlene Rasmussen. [217]

DARLENE RASMUSSEN

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Will you please state your name?

A. Darlene L. Rasmussen.

The Court: How do you spell that last name, please?

A. R-a-s-m-u-s-s-e-n.

Q. Would you be good enough to tell us where you were employed, if in fact you were employed, over the Labor Day week-end in 1956?

A. The Record Shop.

Mr. Plummer: May I have Plaintiff's Exhibit No. 4.

(Testimony of Darlene Rasmussen.)

The Court: It may be marked as Exhibit No. 19 for identification.

Mr. Plummer: This has already been introduced as Plaintiff's Exhibit No. 4.

The Court: I thought you asked to have it marked.

Mr. Plummer: No. I am sorry.

The Court: Thank you.

Mr. Plummer: May I approach the witness?

The Court: You may. [218]

Q. (By Mr. Plummer): I hand you, Miss Rasmussen, what has been admitted into evidence as Plaintiff's Exhibit No. 4 and ask you what it is, if you know?

A. This is the check that I took at the Record Shop while working there over the Labor Day weekend.

Q. I wonder, Miss Rasmussen, if you will be good enough to look around the courtroom and tell me whether or not you see the man that passed that check to you on that occasion?

A. Yes, sir.

Q. Will you be good enough to point him out?

A. It's the gentleman in the beige suit, wine tie, in the second row.

Mr. Plummer: Let the record reflect that I am pointing to Mr. Dewey Taylor as I ask this question, is this the gentleman?

A. Yes, it is, sir.

Mr. Plummer: I have no further questions of this witness.

(Testimony of Darlene Rasmussen.)

The Court: Any cross-examination? You may step down, Miss Rasmussen. Thanks for coming. You may be excused without objection.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: May the record reflect that this is the check mentioned in Count 14 of the indictment.

The Court: Very well.

Mr. Plummer: May I ask that Mr. George Cox be called. [219]

GEORGE COX

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. George Cox.

Q. And will you be good enough to tell us what your employment was over the Labor Day week-end in 1956?

A. I was a partner in City Service.

Q. What was the name of your establishment?

A. City Service.

Q. Thank you.

(Testimony of George Cox.)

Mr. Plummer: May I have Plaintiff's Exhibit No. 5. May I have just a minute, your Honor.

The Court: You may. Mr. Plummer, I think you will find that you were—just reverse the identification. Number 3 is Tom's T.V. and Number 4 is City Service. They are so marked and that is the way I have them listed.

Mr. Plummer: Fine. Would the record then reflect that Exhibit No. 3 is Tom's Radio.

The Court: It so does.

Mr. Plummer: Fine. Thank you. May I have Plaintiff's [220] Exhibit 4. May I have just a minute, your Honor.

The Court: You may.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Cox, I hand you what has been admitted as Plaintiff's Exhibit No. 4 and ask you to look at it and tell me what it is, if you know.

A. It's a check I took on Sunday before Labor Day for \$219.46 on Morrison-Knudsen Company, Number 8977.

Q. And who is the payee?

A. Signed by James C. Woods.

Q. And did the man sign it in your presence?

A. Yes, sir.

Q. Did he display identification?

A. Yes, sir.

Q. And I wonder if you would be good enough,

(Testimony of George Cox.)

sir, to look around the courtroom and tell me where this party is if he happens to be in the courtroom?

A. First seat with light suit with white handkerchief in his pocket.

Q. May the record reflect that I am pointing to Mr. Dewey Taylor when I ask this question, is this the gentleman that passed the check to you on that occasion? A. Yes, sir. [221]

Q. Have you ever received any money for this check? A. No, sir.

Mr. Plummer: I have no further questions of this witness.

The Court: You may cross-examine.

Mr. Nesbett: No cross.

The Court: Very well. You may step down.

Mr. Kay: Your Honor, I am mixed up on the exhibits. I thought Exhibit No. 4 had just been identified and testified to by Darlene Rasmussen, the Record Shop.

The Court: Inadvertently that was Number 3.

Mr. Kay: Which exhibit was she actually identifying, 4 or 3?

The Court: I can't tell you.

Mr. Kay: The record shows she identified and testified concerning Exhibit 4. Now Mr. Cox testifies and identifies the same check.

Mr. Plummer: I would request of the court permission to recall Mrs. Rasmussen and recheck the record.

The Court: Without objection you may do so.

Mr. Cox, you may step down and without objection this witness may be excused.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: May I have just a minute, your Honor.

The Court: Yes. [222]

The Court: Are you sending—

Mr. Plummer: For Miss Rasmussen. We will proceed with some other count.

The Court: Very well.

Mr. Kay: Could we take the 11:00 o'clock recess, your Honor.

The Court: Any objection?

Mr. Plummer: No.

The Court: Ladies and gentlemen of the jury—no movement in the courtroom, please—you are requested to use the restrooms upstairs, not to use the hall whatsoever. That will be the order from this date forward. We have had to deviate from that because of the fact we have been holding court in the American Legion Hall and Elks Hall, but I instruct you not to communicate with anybody in the corridors whatsoever. The court will now go into recess for a period of 10 minutes.

(Whereupon, at 11:10 o'clock a.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors

are back and present in the box. You may call your next witness.

Mr. Plummer: May I ask leave to recall Darlene Rasmussen. [223]

DARLENE RASMUSSEN

recalled as a witness for and on behalf of the Government, and having previously been duly sworn, testifies as follows on

Direct Examination

Mr. Plummer: May the record reflect, your Honor, that this is the same Darlene Rasmussen who appeared as a witness in this case a few minutes ago. She was called at that time and sworn. May I remind her now that she is still under oath.

The Court: Very well. You may proceed.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

By Mr. Plummer:

Q. I hand you what has been marked and admitted as Plaintiff's Exhibit No. 3 in this case. I think through inadvertence the record became confused as to whether or not this was the check that was accepted by you on the Labor Day week-end. Would you look at the check and tell us whether or not it is?

A. Yes, sir, I am positive this is the one. It has my initials on it and also has "For Deposit Only to the First National Bank for the Record Shop and

(Testimony of Darlene Rasmussen.)

Radio T.V. Center," so I am positive it is the check.

Q. And would you look at the front of the check and you'll see a little yellow sticker on there. Would you see what it says?

A. Plaintiff's Exhibit No. 3, I believe that is what it stands for, [224] and the number is 3772.

Q. And would you give me the serial number of the check?

A. It is pay check number 8973.

Q. And that is the one that you took?

A. Yes, it is, sir. It has my initials on it.

Mr. Plummer: May the record reflect that this is the check listed in Count No. 14 of the indictment.

The Court: Without objection you may do so.

Mr. Plummer: I have no further questions of this witness.

The Court: Very well. Is there any cross-examination?

DARLENE RASMUSSEN

testifies as follows on

Cross-Examination

By Mr. Hepp:

Q. It seems to me that, as I recall your other testimony, you were very sure that the check you looked at before was the one that you took?

A. Well, I—pardon?

Q. Could you have been in error then?

A. Yes, I was, sir. I was in error. I was looking on the back for our deposit stamp, but in the con-

(Testimony of Darlene Rasmussen.)

fusion there was no—so many stamps on the back, you will notice, I couldn't find it and this is the right check. [225]

Q. But you were willing to testify under oath before that that was the check?

A. Well, I was confused, sir. I am sorry.

Mr. Hepp: I have no further questions.

The Court: Any further cross? Very well.

Q. (By Mr. Hepp): There is no doubt?

A. No, sir. This is my own handwriting in the left hand corner and this is my own initials. I am very sure.

Q. Was there any doubt before when you testified that that was the check?

A. Well, I was hunting on the back for our deposit stamp, but I did not deposit the check myself, thereby I did not know if it had the rubber stamp on it or not.

Q. I repeat my question. Was there any doubt when you testified before that that was the check that you had deposited?

A. Well, as I say, I was hunting for the rubber stamp mark but I did not find it. It was for the same amount, \$219.00, and I was quite sure that it was the one then.

Q. There was no doubt in your mind then?

A. At the present time, no. After I got back to the office I was wondering.

Q. I am referring to the first check. Was there any doubt?

Mr. Plummer: Will you please let the witness

(Testimony of Darlene Rasmussen.)

answer the question. You asked her a question. Let her answer before [226] you break in, please.

The Court: You may proceed.

Q. (By Mr. Hepp): I just repeat my original question. Was there any doubt in your mind when you testified before under oath that that was the check that you couldn't find your initials on?

A. No, at the time there was no doubt. I thought it was the one.

Q. But you were wrong though?

A. Yes, I was.

The Court: Very well. Any further questions?

Mr. Hepp: No, your Honor.

The Court: You may step down then. You may now be excused, Miss Rasmussen.

Mr. Plummer: Thank you. We will promise not to have you come back again.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: Benny Leonard.

BENNY LEONARD

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel. [227]

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Benny Leonard.

(Testimony of Benny Leonard.)

Q. And do you have a certain business enterprise around town here, sir?

A. Yes, I have Leonard's Variety.

Q. And where is that located?

A. 418 Fourth Avenue.

Q. And were you the owner of this establishment on the Labor Day week-end in 1956?

A. Yes, I was.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. I hand you, Mr. Leonard, what has been marked for identification and admitted as Plaintiff's Exhibit No. 5 and ask you to look it over and tell me what it is, if you know?

A. It is a check I received.

Q. And when did you receive it, if you know? Was it over the Labor Day week end?

A. Yes, I believe it was Monday.

Q. And did you ever receive any money for that check? A. No.

Q. And——

A. I've got a slip here from——

Q. No, your answer is sufficient, sir. We can't tell what [228] somebody else may have told you. Just answer the question and you have. Would you look at the back of the check, Mr. Leonard, and does it contain an endorsement? A. Yes.

Q. And what is the name of the endorsement?

A. Well, the first one is James C. Woods.

Q. Fine, and I wonder if you would look around the courtroom and find out—tell me if the party

(Testimony of Benny Leonard.)

that signed that as James C. Woods is present here in court, if you know?

A. Yes. It's the second man from the left.

Q. Would you point him out to me, sir? May the record reflect that I am pointing to Mr. Dewey Taylor and ask you if this is the gentleman that passed the check?

A. Yes.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine.

Mr. Nesbett: No questions, your Honor.

The Court: Very well. You may step down, Mr. Leonard. Thanks for coming. Without objection you may be excused.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: Yes, your Honor. May I call Mr. Joe Turgeon.

JOSEPH TURGEON,

called as a witness for and on behalf of the Government, and being [229] first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Joseph Turgeon.

The Court: How do you spell the last name, please?

(Testimony of Joseph Turgeon.)

A. T-u-r-g-e-o-n.

The Court: Thank you.

Q. (By Mr. Plummer): Did you have employment in the Anchorage area over the Labor Day week end in 1956, sir? A. I did, sir.

Q. Would you be good enough to tell us where you worked?

A. At Stewart's Photo.

Mr. Plummer: May I have Plaintiff's Exhibit 6. May I approach the witness, your Honor?

The Court: You may.

Q. Mr. Turgeon, I hand you what has been admitted into evidence as Plaintiff's Exhibit No. 6 and ask you to examine it carefully and tell me what it is, if you know?

A. Yes, it is, sir. It's a check I accepted for a purchase of a camera.

Q. And will you look at the reverse side of the check, sir, and is there an endorsement on there? [230] A. Yes, there is, sir.

Q. Will you tell me the name of the first endorser on there? A. James C. Woods.

Q. I wonder if you would be good enough to look around the courtroom to see if you find the person who purported to be James C. Woods on that occasion? A. Yes, I do.

Q. And would you point him out?

A. He is the third man from the right.

Q. May the record reflect as I am asking this question that I am pointing to Mr. Dewey Taylor, is this the gentleman that passed the check and

(Testimony of Joseph Turgeon.)

signed the name James C. Woods?

A. Yes, sir.

Mr. Plummer: I have no further questions, your Honor.

The Court: You may cross-examine. Very well, then you may step down and without objection you may be excused. Thanks for coming.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: Now, may we call Mrs. Jurgelite, please.

GERTRUDE JURGELITE

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel. [231]

By Mr. Plummer:

Q. Will you please state your name?

A. Gertrude Jurgelite.

The Court: J-u-r-g-e-l-i-t-e?

A. Yes.

Q. Mrs. Jurgelite, do you and your husband have a business enterprise any place? A. Yes.

Q. What is it?

A. Mile 113, Glenn Highway, Sheep Mountain Lodge.

Q. Were you the owners and operators of that establishment over the Labor Day week end of 1956? A. We were.

(Testimony of Gertrude Jurgelite.)

Mr. Plummer: May I have this marked for identification?

The Court: It's marked as Number 19 now, is that correct?

Deputy Clerk: Yes, your Honor.

Mr. Plummer: May the record reflect I am showing it to counsel.

The Court: You may do so without objection.

Mr. Plummer: The counsel has mentioned to me that there is an item in here that is not part of the check. I will ask—I will hand it to the in-court deputy and ask that you remove this since it has been marked for identification.

The Court: Without objection that will be the order. [232]

Mr. Plummer: May counsel approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mrs. Jurgelite, I hand you what has been marked for identification only as Plaintiff's Exhibit No. 19. I ask that you look it over and tell me what it is after you have looked it over, if you know?

A. That's the check that the taxi driver gave me.

Q. And when did he give it to you?

A. Oh, it was that week end. I don't remember the exact date. It was early in the morning.

Q. Of what year? A. '56.

Q. And was it at your establishment up at Sheep Mountain? A. What?

(Testimony of Gertrude Jurgelite.)

Q. Was it at your establishment at Sheep Mountain? A. Yes.

Q. Will you tell us the circumstances of this transaction, if you recall?

A. Well, two men came into the lodge about 5:00 or 6:30 in the morning, it was early in the morning, and one was a man by the name of Russell Hobbs that had been in there a couple of times. He owns a taxi stand or taxi or something, and this other man was with him and he bought a tire, a used tire and [233] glass of milk and Russell Hobbs gave me this check. It was—he said it was this other man's check, Theodore Williams.

Q. Was it endorsed at the time he gave it to you? A. Yes, it was already endorsed.

Q. And was the man present in the establishment whose signature it purported to be on the endorsement?

A. The white man—I mean, Theodore——

Q. Yes? A. Yes.

Q. And I wonder if you would be good enough to look around the courtroom and tell me if that man is present here in court?

A. I saw him over in the jail in November, but I can't see him—oh, yes, I can sir. It's the second gentleman between the two colored men.

Q. May the record reflect that when I am asking this question I am pointing to Mr. Lemuel Ashley Williams, is this the gentleman whose signature purports to be on the back of the check?

A. Yes.

(Testimony of Gertrude Jurgelite.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Mr. Plummer: I now offer this in evidence.

The Court: Is there any objection. Without objection it may be admitted then and marked Government's Exhibit No. 19.

Mr. Plummer: I have no further questions of this [234] witness.

The Court: You may cross-examine then, counsel.

GERTRUDE JURGELITE

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. As I get it, your testimony, Mrs. Jurgelite, it was this Russell Hobbs that actually handed you the check?

A. Yes, he actually handed it to me. That is true.

Q. And he had it in his possession at that time?

A. He had it in his possession.

Q. Mr. Williams just standing there at the time?

A. Well, he agreed that it was his check.

Q. I see. And that he had given it to Hobbs?

A. Yes.

Q. So Hobbs is the one who passed it to you?

A. That's right.

Mr. Kay: I have no further questions.

GERTRUDE JURGELITE

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. He did so in the presence of this gentleman who you have [235] identified as——

A. Yes.

Q. They were both standing there?

A. They were both there, yes.

Mr. Plummer: I have no further questions.

The Court: Very well. You may step down, Mrs. Jurgelite. Thanks for coming. This witness may be excused without objection.

(Thereupon, the witness was excused and left the stand.)

The Court: Could you refer to the count?

Mr. Plummer: May the record reflect that this is Count 20 of the indictment, your Honor.

The Court: Thank you. You may call your next witness.

Mr. Plummer: May I have just a minute, your Honor, to check the checks.

The Court: Very well.

Mr. Plummer: I ask that the bailiff call—first, I ask that Mr. Williams, Mr. Taylor, and Mr. Wright be removed from the courtroom.

The Court: Any objection?

Mr. Kay: No.

The Court: That is Mr. Taylor and Mr. Wil-

liams and the other gentleman, you may be excused.

(Thereupon, Mr. Williams, Mr. Taylor, and Mr. Wright left the courtroom.)

Mr. Plummer: I ask that the bailiff then [236] call Mr. Edward Harkabus.

EDWARD J. HARKABUS

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Edward J. Harkabus, H-a-r-k-a-b-u-s.

Q. You anticipated my next question.

The Court: Thank you; that's very important to the Court Reporter and In-Court Deputy as well as the Court.

Q. (By Mr. Plummer): Where do you live, sir?

A. Fairbanks, Alaska.

Q. Now, do you know the defendant in this case, Charles Edward Smith?

A. I do.

Q. Now, did you have the occasion to see the defendant Charles Edward Smith on March 17, 1957?

A. I did.

Q. And would you be good enough to tell us where you saw him?

A. King County Jail in Seattle, Washington.

Q. And do you recall about what time of the day it was?

(Testimony of Edward J. Harkabus.)

A. Roughly around two—two-thirty in the [237] afternoon.

Q. And do you recall what day of the week that was? A. That was on a Sunday.

Q. And did you see him by yourself, or was there somebody with you when you saw him, or somebody with you?

A. I was present, Mr. Smith was present, Lt. William Trafton of the Territorial Police and Chief—or, excuse me, Special Deputy U. S. Marshal, Ted Pass was also present.

Q. And was there anybody else present at the time? A. For part of the time, yes.

Q. Did you have occasion to interview him on that occasion? A. Yes, I did.

Q. And did he make any statements to you regarding his participation of the Morrison-Knudsen check swindle over the Labor Day week end in 1956?

Mr. Nesbett: I will object to that and ask permission of the Court to approach the bench.

The Court: Motion granted.

(Thereupon, all counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

Mr. Nesbett: Your Honor, I object to questioning along these lines, while the defendant was in custody at the time. I notice an attempt to introduce the statement, after the answering of this question, I assume, and the statement would be the

(Testimony of Edward J. Harkabus.)

best evidence, and I want to hear him on the statement because I have [238] reason to believe, I have strong reason to believe that the statement was taken under grounds that would cause it to be inadmissible on the ground coercion was taken before he was arraigned and on a promise——

The Court: Very well, the Court then in conformance with the Rules and Practice will excuse the jury and will try the admissibility or inadmissibility of the statement.

Mr. Nesbett: Could the hearing be held in chambers, or with the spectators out of the courtroom? I know that it's very difficult, as your Honor realizes, by not keeping the jurors from the hallway, it will not keep from them any of the proceedings and——

The Court: Well, I am concerned about excluding all spectators on the constitutional ground of a public trial.

Mr. Hepp: If I may say a word, as far as the defendant Wright is concerned, I will waive his rights. In fact, he will personally waive his right to have a public hearing in the sense that that word is used in connection with the hearing on the statement.

The Court: Will you waive that, also, as to your defendant, Smith?

Mr. Nesbett: Yes.

The Court: Mr. Kay?

Mr. Kay: Yes, we will waive the constitutional provision. I do not feel that, along with Mr. Nes-

(Testimony of Edward J. Harkabus.)

bett, no matter how hard [239] the jury tried, I am sure they're all conscientious, it's hard, very hard, for them not to hear gossip and for that reason, I would feel it would be wise to excuse the jurors at this time, so it can be done.

Mr. Plummer: With all due respect to counsel, if it's a constitutional right to have a fair and public trial, I do not think they can waive it adequately.

Mr. Hepp: I submit to the Court, the defendant can waive any right that is his right.

Mr. Plummer: I am sure the cases will show otherwise.

Mr. Nesbett: I am informed, your Honor, that Judge Forbes occasionally holds these in chambers and that is all I know is just hearsay on it. Did you tell me that?

Mr. Hepp: I have never attended a chambers hearing on this question, however——

The Court: Well, I would not, regardless of Judge Forbes or anybody else, I would not want to hold it in chambers.

Mr. Kay: I'd rather have it in open court, too. Facilities are better, including the Court Reporter, and I think it would be crowded in chambers anyway because you have all the defendants there and as of right, they'd have to be there.

The Court: Yes, as of right. Mr. Plummer, it appears to the Court—now I'd like to have each one of the defendants come to the bench and state that

(Testimony of Edward J. Harkabus.)

they will waive their right to a public trial; then, if that is done—— [240]

(Thereupon, all Defendants approached the bench.)

The Court: Mr. Wright, your counsel, Mr. Hepp, states that on this proceeding to determine the admissibility or inadmissibility of the statement of one Mr. Smith, that you will waive your right to a public trial and we will exclude all the spectators for this purpose only; and you understand Mr. Wright, if this is done, you could not use this matter on appeal in the event that it becomes necessary for you to appeal, or if you do appeal?

Mr. Wright: What does my counsel think of it?

Mr. Hepp: Yes, waive your right.

Mr. Wright: Yes, I will.

Mr. Ing: I have the instruction and I will waive that right.

The Court: You understand you couldn't use that on appeal?

Mr. Ing: Yes.

The Court: Mr. Smith, your counsel has indicated that you will waive the right to a public trial for a portion of the case to determine the admissibility or inadmissibility of your statement. Now, I am pointing out to you if you waive this right then you cannot use it as a ground for appeal, you understand that, in the event you desire to appeal?

Mr. Smith: Yes.

(Testimony of Edward J. Harkabus.)

The Court: And you do waive that then? [241]

Mr. Smith: Yes.

The Court: Very well, then. Thank you.

(Thereupon, all counsel and defendants returned to their respective seats, and the following proceedings were had in the presence of the jury:)

The Court: For the reasons stated at the bench, the jurors may be excused to go to their jury room and the Court at this time will have to excuse all people in the general courtroom. The only people allowed in the general courtroom will be the defendants, their counsel, and of course, none of these defendants (indicating defendants Walker, Taylor, and Williams)—they're all under bond, aren't they? And, of course, Mr. Laird may stay in conformance with the prior rule.

Very well, ladies and gentlemen of the jury, you may be excused to go to the jury room. I don't know how long it will take. We may complete it before lunch; we may not. I can't assure you at this time and in the meantime, the Court expects all spectators in the courtroom to absent themselves from the courtroom and the bailiff is instructed to keep all visitors from coming in on this facet of the case.

(Thereupon, the jurors were excused to go to the jury room and the spectators retired from the courtroom, after which the following proceedings were had:)

(Testimony of Edward J. Harkabus.)

The Court: Let the record show all spectators and jurors have been excluded from the courtroom and the only people present are the three defendants, their counsel and the District Attorney, Mr. Laird—or, Sgt. Laird of the Territorial Police, and the court personnel, plus the witness, Mr. Harkabus. You may proceed.

Q. (By Mr. Plummer): Mr. Harkabus, what was your employment over the Labor Day week end of 19— or——

The Court: Pardon me, I am sure counsel will not object if I ask for my Law Clerk to come in during this hearing?

Mr. Kay: No, that will be fine.

The Court: Mr. Gearlings may come in, Mr. Johnson. Now, you may proceed.

Q. (By Mr. Plummer): Would you be good enough, Mr. Harkabus, to tell me what your employment was on March 17, 1957?

A. I was Special Agent with the National Board of Fire Underwriters.

Q. You were not employed by the Government?

A. I was not.

Q. Now, I will ask you if whether you saw the defendant on March 17, 1957, in the jail in Seattle in the company with—did you say Smith, Pass and Trafton, and yourself?

A. That is right. [243]

Q. Now, did you have an interview with him on that occasion? A. I did.

Q. And did he, during the course of your inter-

(Testimony of Edward J. Harkabus.)

view, did you mention the Morrison-Knudsen check swindle over the Labor Day week end in 1956, here in Anchorage? A. I did.

Q. And did Mr. Smith make some statements to you about it? A. He did.

Q. And now, during the course of this conversation, did anybody else come into the picture?

A. There was a Seattle Attorney by the name of John Harris, a former Assistant United States Attorney who was present during a portion of this interview with Mr. Smith.

Q. And was he there for the purpose of representing anybody? A. He was.

Q. Who? A. Mr. Smith.

Q. And subsequent to your interview, and subsequent to the time that Mr. Harris was there, did you cause the statements made by Mr. Smith to be reduced to writing? A. I did.

Q. Did you do that yourself?

A. I did that myself.

Q. And after they were reduced to writing, did you then show them to the defendant Smith? [244]

A. I did.

Q. Did he read them?

A. He did read them and they were read to him.

Q. And subsequent to that did you do anything with the statement that you had typed?

A. He signed it. He signed each page with his signature in my presence and I signed it.

Q. Now, this was after he had seen his attorney Richard Smith?

(Testimony of Edward J. Harkabus.)

A. That's correct—I believe not Smith—Harris, John Harris.

Q. I'm sorry. I became confused; and I think I got you confused.

Mr. Plummer: I at this time ask that this be marked for identification.

The Court: It may be marked as Government's Exhibit No. 20 for identification only.

Mr. Plummer: May I show it to the witness before showing it to counsel, just to have him identify it? This is the statement he typed up that day.

The Court: You may do so.

(Thereupon, the witness was handed the document.)

Q. (By Mr. Plummer): Will you look this over, Mr. Harkabus and tell me what it is, if you know—the item which you now have, which has been marked for identification only as Plaintiff's Exhibit No. 20?

A. This is a four-page statement which I typed for Mr. Smith's [245] signature. I recognize it from my own signature on there and from the contents of the statement.

Q. Thank you, Mr. Harkabus. Let the record reflect I am now showing the statement to counsel.

The Court: For my information, Mr. Plummer, how many more witnesses will you call in regard to this statement?

Mr. Plummer: If necessary, I will call possibly one, two, three, maybe four. It all is depending on

(Testimony of Edward J. Harkabus.)

the Court's ruling when the objection is made, if in fact an objection is made.

Mr. Kay: Would it be proper for us to inquire who they are?

The Court: Here is what I was getting at. It's been the practice of the Court to hear all witnesses you intend to call during this "out-of-the-hearing-jury" proceeding, and then thereafter, of course, they would be called again. I was trying to gauge my time is why I asked that question.

Mr. Plummer: I am probably optimistic, but I think that the objection which counsel are about to make will be overruled to the extent the hearing will be very, very limited, but in the event the objection is sustained, then I will probably call four witness, two of which will be very, very short.

The Court: Well, counsel, out of fairness to the court, I should like to hear more than one witness. That does not impugn Mr. Harkabus in any manner, whatsoever; it's just a question of [246] corroboration.

Mr. Plummer: Two of the witnesses I am going to call will be for the purpose of showing that the other witnesses that were there are not available and Mr. Trafton is in fact in Japan at the present time and Mr. Pass who was also present is in a Federal hospital down in the South some place.

The Court: Well, will you have then a witness to corroborate Mr. Harkabus' statements?

Mr. Plummer: The witnesses that I will have—the two witnesses that I will have will be to show that subsequent to arraignment—if I may pursue

(Testimony of Edward J. Harkabus.)

this while we're talking—subsequent to arraignment, both here and at Seattle, that Mr. Smith, the defendant, did as a matter of fact, say that the statement was true and further that he made that statement to the police officers and took them out and showed them different places he went to, mentioned in the statement, and, further, that he then went to——

Mr. Nesbett: If he is going to call witnesses to that effect, I'd say the best evidence is the testimony of those witnesses.

Mr. Plummer: That is the reason I am trying to be helpful to the Court in response to the Court's question. I am answering the Court.

Mr. Nesbett: I realize that, your Honor, yes.

The Court: Well, I am concerned. Are you going to call another witness who was there at the same time as Mr. Harkabus? [247]

Mr. Plummer: There are no other witnesses available.

The Court: What about this Mr. Harris, the attorney?

Mr. Plummer: I guess he is probably down in Seattle, but he is not under Government subpoena.

The Court: Well, thank you. There is nothing we can do but proceed, I suppose.

Mr. Nesbett: Well, your Honor, I know I will be reading this until noon (indicating Government's Exhibit No. 20). Maybe your Honor could be guided accordingly as far as the jury and the Court are concerned.

(Testimony of Edward J. Harkabus.)

The Court: It appears to the Court, Mr. Plummer, that we best take our lunchtime recess in light of that. I have a number of matters set down for 1:30. I wonder if we shouldn't ask the jurors to come back at 2:30 in the event we may have covered this problem satisfactorily to the Government?

Mr. Plummer: To the Government, yes.

Mr. Nesbett: I don't think that will be time enough. Did your Honor mean to commence this trial at 1:30?

The Court: No, 2:30.

Mr. Nesbett: I would say 3:00 o'clock at the earliest.

The Court: Will you please call the jurors down so the Court can properly instruct them?

(Thereupon, the Court Bailiff left the courtroom to bring the jurors back into the courtroom, after which the following proceedings were had in the [248] presence of the jury:)

The Court: Let the record show all the jurors are back and present in the courtroom. Ladies and gentleman, this matter is going to take considerable time to develop and determine; therefore the trial of this case will be continued until 2:00 p.m. this afternoon, but you are excused until 3:00 p.m. this afternoon. As you know, I must instruct you at this time not to discuss this case among yourselves, nor are you permitted to let others discuss it with you. You may now be excused and this Court will go into recess until 1:30.